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FEDERAL COMMUNICATIONS COMMISSION

*Reed E. Hundt, Chairman
James H. Quello
Andrew C. Barrett
**Ervin S. Duggan

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*Reed E. Hundt designated Charman effective November 29, 1993.
**Ervin S. Duggan resigned January 31, 1994.

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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of NAL Acct No. 315HF0031
Philips Telecom
Equipment Company
New York, NY 10017

FORFEITURE ORDER

Adopted: March 25, 1994; Released: April 4, 1994

By The Field Operations Bureau:

I. INTRODUCTION

1. This Forfeiture Order is issued by the Chief, Enforcement Division after considering the Notice of Apparent Liability (NAL Acct. No. 315HF0031) issued Philips Telecom Equipment Co.(Philips) on August 26, 1993, and Philip's September 24, 1993 response thereto. The NAL in the amount of $4,000 was issued to Philips pursuant to Section 503(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §503(b), for willful violation of Section 302(b) of the Communications Act, 47 U.S.C. §302(b), and Section 2.946 of the Commission's Rules, 47 C.F.R. §2.946.

2. The appropriate amount for this forfeiture is $3,200.

II. BACKGROUND

3. An NAL was issued to Philips for failure to respond to the Commission's Columbia Laboratory, Sampling and Measurements Branch's request for submission of a production-line sample of its GUCFM1100V land mobile transmitter. The sample was requested pursuant to the Commission's authority under Section 2.945 to request samples of authorized devices for post-grant sampling. Failure to comply with such requests within 60 days may be grounds for imposition of a forfeiture. *See* 47 C.F.R. §2.946. The Sampling and Measurements Branch made two requests for the sample and provided instructions regarding the manner in which it should be submitted. On August 19, 1993, a Philips representative contacted the Sampling and Measurements Branch to make arrangements for mailing in the requested sample.

III. DISCUSSION

4. In its response to the NAL, Philips requests a rescission of or reduction in the amount of the forfeiture on the basis of what, it argues, is a "minor" violation, Philips' "good faith" in complying with the request, and its "history of overall compliance". We agree that the amount should be reduced on the basis of Philips' history of overall compliance. We cannot, however, agree to a reduction either on the basis of "good faith" or as a "minor violation". The degree of severity of a violation is determined by comparing the violation to other violations within the same category. The base amount of the forfeiture for this type of violation presupposes a violation involving failure to provide requested data or samples of equipment. Philips has not offered any justifications or presented any reasons for its delay of approximately three months. Without any reasons or justification, we cannot agree either that Philips acted in "good faith" or that the violation should be viewed as minor.

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that Philips Telecom Equipment Company FORFEIT to the United States the sum of three thousand two hundred dollars ($3,200) for willful violation of Section 302(b) of the Act, specifically, Section 2.946 of the Rules, 47 C.F.R. § 2.946. This Forfeiture Order is authorized under Section 503(b) of the Communications Act, 47 U.S.C. § 503(b).

6. IT IS FURTHER ORDERED that Philips Telecom Equipment Company shall make such payment within 30 days of receipt of this Order. Payment should be made by check or money order payable to the Federal Communications Commission, and must be mailed to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

7. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this FORFEITURE ORDER to Philips Telecom Equipment Company, and to its parent company, Philips Electronics.

FEDERAL COMMUNICATIONS COMMISSION

Lauren J. Belvin
Chief, Enforcement Division
Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 25, 1994

Released: April 4, 1994

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Quad Cities Television 1800E
Acquisition Corp.
Licensee, KLJB-TV
915 Middle River Drive, Suite 409
Fort Lauderdale, Florida 33304

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars ($10,000) pursuant to § 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by § 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

In response to the Children's Television Act of 1990, the Commission adopted rules and policies limiting the amount of commercial time which may be aired during children's programming to 10.5 minutes on weekends and 12 minutes on weekdays. 47 C.F.R. § 73.670. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (program-length commercial). *Children's Television Programming*, 6 FCC Rcd 2111, 2118 *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). These commercial limitations became effective on January 1, 1992.

On October 1, 1992, you filed an application for renewal of license (FCC Form 303-S) for KLJB-TV, Davenport, Iowa (BRCT-921001KV). In a supplement to FCC Form 303-S you indicated that KLJB-TV had failed to comply with the limitations on commercial matter during children's programming on one occasion during your last license term. Subsequently, on January 25, 1993, you submitted an amendment to your renewal application in which you revealed that KLJB-TV had exceeded the commercial limits during children's programming on 2 additional occasions in December 1992. All three of these commercial overages involved program-length commercials.

You state that the first program-length commercial inadvertently occurred when a commercial involving "Tailspin" characters ran during the program "Tailspin" after the program was moved from the 3:30 pm time period to the 3:00 pm time period on September 8, 1992. You indicate that immediately after this occurrence, corrective action was taken to create a central file where copies of contracts involving children's program characters are maintained. In addition, more monitoring and checking of children's commercials was initiated. You state that the two program-length commercials on December 28 and 29 occurred because the staff person in the traffic department responsible for screening the commercials did not screen them before she left on vacation and did not tell her supervisor that she had failed to review the tapes. You indicate that the employee was reprimanded and that all employees were reminded of the importance that management places on compliance with Commission rules.

Your record of exceeding the Commission's limits on commercial matter during children's programming by airing three program-length commercials during your license period after these limits became effective, constitutes a willful and repeated violation of § 73.670 of the Commission's Rules. Accordingly, pursuant to § 503(b) of the Communications Act, Quad Cities Television Acquisition Corp., is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of ten thousand dollars ($10,000) for its apparent willful and repeated violation of 47 C.F.R. § 73.670. The amount specified was reached after consideration of the factors set forth in § 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. The three program-length commercials aired on KLJB-TV clearly indicate that you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. § 73.670 until January 1, 1992, we stated that "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming*, 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional or other difficulties that prevented KLJB-TV from complying with the commercial limits during your license period. Instead, the violations appear to result from the failure to effectively communicate to station staff the need for strict compliance with the commercial limits and the failure to implement adequate review procedures. Under these circumstances no upward or downward adjustment to the base forfeiture amount is warranted.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station KLJB-TV would serve the public interest. Therefore, your application, BRCT-921001KV, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of § 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosures
cc: Kenneth E. Satten, Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 25, 1994

Released: April 4, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Associated Broadcasters, Inc. 1800E
Licensee, KVEO(TV)
394 N. Expressway
Brownsville, Texas 78521

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars ($10,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

When Congress adopted the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, it required the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming and to consider in its review of television license renewals the extent to which the licensee has met the commercial limits. The Commission adopted policies and regulations to implement Congress' mandate in *Children's Television Programming*, 6 FCC Rcd 2111, *recon. granted in part*, 6 FCC Rcd 5093 (1991). Among the regulations adopted was 47 C.F.R. Section 73.670, which provides that:

> No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529 (1991).

On April 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for KVEO(TV), Brownsville, Texas (BRCT-9304015K). You also filed a supplement to FCC Form 303-S which contains questions to determine whether the licensee has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. In this supplement, you indicated that KVEO(TV) had failed to comply with the limitations on commercial matter during children's programming during your last license term. You also attached, as Exhibit 2, an explanation of your noncompliance.

In Exhibit 2, you revealed that from April 13, 1992, through July 3, 1992, KVEO(TV) repeatedly exceeded the commercial limits during children's programming between 6:00 and 7:00 am, and between 4:00 and 5:00 pm on weekdays. These commercial overages were as follows: 90 seconds - seven times; 60 seconds - seven times; 30 seconds - ten times; and 15 seconds - two times.

You admitted that, during the first two quarters of 1992, any compliance with the Commission's commercial limits during children's programming was due to a lack of commercial sales rather than any effort at compliance. Once sales picked up, you repeatedly exceeded the commercial limits. However, shortly after the end of the second quarter of 1992, you realized that KVEO(TV) was exceeding the commercial limits during children's programming. You took action on July 10, 1992, by altering your format during all children's programming to preclude future overages. Your computer traffic system now will not allow the placement of commercials during certain breaks in children's programming. Since making these modifications, you have not had any commercial overages.

Your record of exceeding the Commission's limits on commercial matter during children's programming on 26 occasions during your license period after these limits became effective, constitutes a repeated rule violation. Accordingly, pursuant to Section 503(b) of the Communications Act, Associated Broadcasters, Inc., is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of ten thousand dollars ($10,000) for its apparent repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. The 26 occasions on which you exceeded the Commission's limits on commercial matter during children's programming, including 14 overages 60 seconds or longer in length, clearly indicate that initially you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. Section 73.670 until January 1, 1992, we stated that, "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming*, 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional or other difficulties that prevented Station KVEO(TV) from complying with the children's advertising limitations during your license period. Indeed, you admit that it was only because of a lack of sales that you were in compliance on any occasions during the first two quarters of 1992. The fact that now you have implemented a plan to eliminate future commercial overages does not relieve you of liability for prior violations. *See International Broadcasting Corp.*, 19 FCC 2d 793 (1969). Under these circumstances no upward or downward adjustment to the base forfeiture amount is warranted.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station KVEO(TV) would serve the public interest. Therefore, your application, BRCT-9304015K, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosures
cc: Vincent J. Curtis, Jr., Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
March 25, 1994

Released: April 4, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

R & R Media Corporation 1800E
Licensee, WTWS(TV)
P.O. Box 991
New London, Connecticut 06320

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars ($20,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules, for repeated violation of the Commission's rule limiting the amount of commercial matter that may be aired during children's programming.

When Congress adopted the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, it required the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming and to consider in its review of television license renewals the extent to which the licensee has met the commercial limits. The Commission adopted policies and regulations to implement Congress' mandate in *Children's Television Programming*, 6 FCC Rcd 2111, *recon. granted in part*, 6 FCC Rcd 5093 (1991). Among the regulations adopted was 47 C.F.R. Section 73.670, which provides that:

> No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

These commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529 (1991).

On December 1, 1993, you filed an application for renewal of license (FCC Form 303-S) for WTWS(TV), New London, Connecticut (BRCT-931201LJ). You also filed a supplement to FCC Form 303-S which contains questions to determine whether the licensee has complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670. In this supplement, you indicated that WTWS(TV) had failed to comply with the limitations on commercial matter during children's programming during your last license term.

In Exhibit No. 3 to your application, you revealed that from July 1992, through September 1993, WTWS(TV) repeatedly exceeded the commercial limits during children's programming on 80 occasions. These commercial overages were as follows: four minutes - one time; two minutes and 30 seconds - three times; two minutes and 15 seconds - one time; two minutes - six times; one minute and 45 seconds - eight times; one minute and 35 seconds - one time; one minute and 30 seconds - six times; one minute and 15 seconds - 16 times; one minute - 12 times; 50 seconds - one time; 45 seconds - 15 times; 30 seconds - seven times; 15 seconds - three times.

You stated that during the last license term, WTWS(TV) underwent several management changes and struggled to maintain its financial ability to continue broadcasting. Moreover, you asserted, while you had considered filing for bankruptcy, you decided to keep the station on the air with a reduced staff. You further stated that during the station's numerous management changes, the staff was not properly advised as to the requirements of the limits on commercials during children's programming. In fact, you admit that the station's present management did not become aware of this requirement until they began the preparation of WTWS(TV)'s renewal application. You claim that procedures have now been adopted to ensure compliance.

Your record of exceeding the Commission's limits on commercial matter during children's programming on 80 occasions during your license period after these limits became effective, constitutes a repeated rule violation. Accordingly, pursuant to Section 503(b) of the Communications Act, R & R Media Corporation is hereby advised of its APPARENT LIABILITY FOR A FORFEITURE of twenty thousand dollars ($20,000) for its apparent repeated violation of 47 C.F.R. Section 73.670. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines set forth in our *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 93-1526 (D.C. Cir. filed August 23, 1993).

Under these standards, $10,000 is the base forfeiture for violation of our children's television commercialization limits. An upward adjustment of the base forfeiture amount may be warranted under established criteria such as egregious misconduct or when the violation is repeated or continuous. In determining the appropriate forfeiture amount for this violation of the commercial limits during children's programming, we have taken into consideration several factors of particular importance. We have considered the number of instances of commercial overages and the length of each overage. We have also considered the period of time over which such overages occurred. Finally, we have considered whether or not the licensee established an effective program to monitor compliance.

The 80 occasions on which you repeatedly exceeded the Commission's limits on commercial matter during children's programming is a high number of violations. Moreover, most of these commercial overages were 30 seconds in length, or longer. Thus, it appears that one or more 30-second commercials were carried on 77 of these occasions. On 54 occasions 60 seconds or more of excess commercial matter were aired. By your own admission, you did not establish an effective program to monitor compliance with the Commission's commercial limits. When the Commission delayed the effective date of 47 C.F.R. Section 73.670 until January 1, 1992, we stated that, "giving the

additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance [and], in the context of any enforcement action for violations of the limits, we would be unlikely to be sympathetic to claims of difficulties." *Children's Television Programming*, 6 FCC Rcd at 5530 n.10. You have not proffered any extraordinary transitional or other difficulties that prevented Station WTWS(TV) from complying with the children's advertising limitations during your license period. Indeed, you admit that a failure to communicate the need to comply with the Commission's commercial limits caused the repeated violations. Moreover, you did not review WTWS(TV)'s programming for compliance with the commercial limits until you were preparing the license renewal application. The fact that now you may have implemented a plan to eliminate future commercial overages does not relieve you of liability for prior violations. *See International Broadcasting Corp.*, 19 FCC 2d 793 (1969). Consideration of these factors warrants an upward adjustment of the forfeiture amount.

Notwithstanding this action, we find you qualified to remain a Commission licensee and conclude that grant of your application for renewal of license for Station WTWS(TV) would serve the public interest. Therefore, your application, BRCT-931201LJ, IS HEREBY GRANTED.

With respect to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Enclosures
cc: Dennis F. Begley, Esquire

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

TATUM JUNIOR-SENIOR HIGH SCHOOL
Las Cruces, NM — File No. BPLIF-920501DT

INTERNATIONAL BUSINESS COLLEGE OF NEW MEXICO, INC.
Las Cruces, NM — File No. BPLIF-920501DW

For Construction Permit and License
in the Instructional
Television Fixed Service on
Channels D1, D2, D3, and D4

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 1994; Released: April 4, 1994

By the Commission:

1. The Commission has before it for consideration the mutually exclusive applications of Tatum Junior-Senior High School (Tatum) and International Business College of New Mexico, Inc. (IBC), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels D1-D4 in Las Cruces, New Mexico.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Tatum is an accredited entity engaged in the formal education of students enrolled at its facility, which is located in Tatum, New Mexico. Since Tatum proposes to serve only students at receive sites in Las Cruces, approximately 200 miles distant from its Tatum facility, the applicant has submitted the requisite letters of intended use from accredited schools that will use its service and has documented the establishment of a local programming committee in the community. IBC, which is accredited by the National Career College Association, State of New Mexico Commission on Higher Education, proposes to provide ITFS service to its own students and to students enrolled at other schools in the area.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523 (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. IBC is entitled to four points for being a school engaged in the formal education of its own enrolled students. Because its facility is not located in or nearby to the area it proposes to serve, Tatum is not entitled to points for being a local applicant.

Accreditation. IBC, accredited by the State of New Mexico Commission on Higher Education, is entitled to three points for accreditation. Although Tatum proposes to serve accredited entities, a factor satisfying its basic eligibility, it is not an accredited entity in its own right in the area it proposes to serve, the factor necessary for earning merit points under the accreditation criterion. Therefore, Tatum is not entitled to any points by this measure. See *Instructional Television Fixed Service - Second Report and*

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

Order Reconsidered in MM Docket No. 83-523, 59 RR 2d 1355, 1370 (1986); and *Unified School District #511*, 8 FCC Rcd 7060, 7061 (1993).

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in the Las Cruces, New Mexico area. Consequently, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. See *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992).

IBC's illustrative schedule proposes an average of 27 hours of ITFS programming per channel per week, all of which is designated as formal educational programming. Further, its programming grid proposes an average of 26.5 hours of formal educational programming per channel per week. Notwithstanding this inconsistency, IBC is entitled to one programming merit point. Likewise, Tatum, whose illustrative schedule and program grid indicate an average of 24.375 hours of formal ITFS programming per channel per week, is entitled to one program merit point.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither is entitled to the one point for such applicants.

Total. IBC is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points. Tatum is entitled to two points for observing the four-channel limitation and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of three points. Accordingly, the tentative selectee is IBC.

OTHER MATTERS

5. IBC proposes to lease its excess capacity for non-ITFS use as permitted by 47 C.F.R. Section 74.931 and has submitted a copy of its lease with Multimedia Development Corporation which conforms in all respects with our requirements. In addition, no petitions to deny or informal objections have been filed against IBC's application.

6. We find IBC fully qualified to be an ITFS licensee and conclude that grant of IBC's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of Tatum Junior-Senior High School (BPLIF-920501DT) IS DENIED, and the application of International Business College of New Mexico, Inc. (BPLIF-920501DW) IS GRANTED.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F.. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

TEXICO MUNICIPAL SCHOOL
Las Cruces, NM — File No. BPLIF-920501DS

GADSDEN INDEPENDENT SCHOOL DISTRICT
Las Cruces, NM — File No. BPLIF-930415DD

For Construction Permit and License
in the Instructional
Television Fixed Service on
Channels C1, C2, C3, and C4

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 1994; Released: April 4, 1994

By the Commission:

1. The Commission has before it for consideration the mutually exclusive applications of Texico Municipal School (Texico) and Gadsden Independent School District (Gadsden), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels C1-C4 in Las Cruces, New Mexico.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Texico is an accredited entity engaged in the formal education of students enrolled at its facility, which is located in Texico, New Mexico. Since Texico proposes to serve only students at receive sites in Las Cruces, approximately 300 miles distant from its Texico facility, the applicant has submitted the requisite letters of intended use from accredited schools that will use its service and has documented the establishment of a local programming committee in the community. Gadsden, which is accredited by the State of New Mexico Department of Education, proposes to provide ITFS service to schools within its jurisdiction and to others located in neighboring school districts.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Gadsden is entitled to four points for being a school district serving the formal educational needs of schools within its jurisdiction. Because its facility is not located in or nearby the area it proposes to serve, Texico is not entitled to points for being a local applicant.

Accreditation. Gadsden, accredited by the State of New Mexico Department of Education, is entitled to three points for accreditation. Although Texico proposes to serve accredited entities, a factor satisfying its basic eligibility, it is not an accredited entity in its own right in the area it proposes to serve, the factor necessary for earning merit points under the accreditation criterion. Therefore, Texico is not entitled to any points by this measure. See *Instructional Television Fixed Service - Second Report and*

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

Order Reconsidered in MM Docket No. 83-523, 59 RR 2d 1355, 1370 (1986); and *Unified School District #511*, 8 FCC Rcd 7060, 7061 (1993).

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in the Las Cruces, New Mexico area. Consequently, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. See *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992).

Gadsden's illustrative schedule proposes an average of 26.5 hours of ITFS programming per channel per week, all of which is designated as formal educational programming. Further, its programming grid also proposes an average of 26.5 hours of formal educational programming per channel per week. Accordingly, Gadsden is entitled to one programming merit point. Likewise, Texico, whose illustrative schedule and program grid indicate an average of 24.375 hours of formal ITFS programming per channel per week, is entitled to one program merit point.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither is entitled to the one point for such applicants.

Total. Gadsden is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points. Texico is entitled to two points for observing the four-channel limitation and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of three points. Accordingly, the tentative selectee is Gadsden.

OTHER MATTERS

5. Gadsden proposes to lease its excess capacity for non-ITFS use as permitted by 47 C.F.R. Section 74.931 and has submitted a copy of its lease with Multimedia Development Corporation which conforms in all respects with the Commission's requirements. In addition, no petitions to deny or informal objections have been filed against Gadsden's application.

6. We find Gadsden fully qualified to be an ITFS licensee and conclude that grant of Gadsden's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of Texico Municipal School (BPLIF-920501DS) IS DENIED, and the application of Gadsden Independent School District (BPLIF-930415DD) IS GRANTED.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

BLACKWELL CONSOLIDATED INDEPENDENT SCHOOL DISTRICT
Roscoe, TX — File No. BPLIF-920203DD

ROTAN INDEPENDENT SCHOOL DISTRICT
Snyder, TX — File No. BPLIF-920821DC

For Construction Permit and License in the Instructional Television Fixed Service on Channels G1, G2, G3, and G4

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 1994; Released: April 4, 1994

By the Commission:

1. The Commission has before it for consideration the mutually exclusive applications of Blackwell Consolidated Independent School District (Blackwell) and Rotan Independent School District (Rotan), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels G1-G4 in the areas of Roscoe and Snyder, Texas, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Both Blackwell and Rotan are school districts accredited by the Texas Education Agency. Both applicants propose to serve the formal educational needs of students enrolled at schools located within and outside their jurisdictions.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive ITFS applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket 83-523 (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being a governmental entity serving the formal educational needs of students enrolled in schools within its respective jurisdiction.

Accreditation. Each applicant, accredited by the Texas Education Agency, is entitled to three points for accreditation.

Four-Channel Limitation. Neither Blackwell nor Rotan is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Consequently, each is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Where the amounts and types of programming proposed in the schedule and in the grid are inconsistent, we shall consider

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits that level of programming to be transmitted. See *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992).

Blackwell's illustrative schedule proposes an average of 24.375 hours of ITFS programming per channel per week. However, the schedule does not indicate which programs are formal educational, as required by Section IV, Question 5 of the application. Accordingly, we will treat this programming as nonformal for the purposes of determining merit points. See *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). Further, its programming grid proposes an average of 4 hours of formal educational programming per channel per week. Because neither the amount of programming specified in Blackwell's schedule or in its grid reaches the threshold amount at which merit points are awarded, Blackwell is entitled to no programming merit points.

Rotan's illustrative schedule indicates an average of 28.75 hours of formal ITFS programming per channel per week. Its program grid, however, indicates 21 hours per channel per week of formal educational programming. Thus, Rotan is deemed to have proposed an average of 21 hours of formal educational programming and is entitled to one programming merit point.

E- and F- Channel Group Relocation. Neither Blackwell nor Rotan is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither is entitled to the one point for such applicants.

Total. Blackwell is entitled to four points for being local, three points for being accredited, and two points for observing the four-channel limitation, for a total of nine points. Rotan is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational ITFS programming per channel per week, for a total of ten points. Thus, the tentative selectee is Rotan.

OTHER MATTERS

5. Rotan proposes to lease its excess capacity for non-ITFS use as permitted by 47 C.F.R. Section 74.931 and has submitted a copy of its lease with Snyder Microwave Communications, L.C., which does not conform in all respects with our requirements. First, the term of the lease as written could extend beyond the ten-year period of the license. Specifically, the lease will run ten years from the "Start Date," which is defined as 30 days after the latest of three events to occur: (1) the satisfaction/waiver of various conditions precedent, including the lessee's acquisition of at least 20 channels in the market area; (2) the completion of construction of 20 channels in accordance with authorized permits and licenses; or (3) the construction of and a grant of a license to operate the present G-channel group. Events (1) and (2) will almost certainly be after the date of grant of this license application, and 30 days after event (3) will, by definition, extend the term of the lease beyond ten years. These provisions are inconsistent with the ten-year maximum for excess capacity leases permitted by our Rules. See *Instructional Television Fixed Service in Gen. Docket Nos. 90-54 and 80-113*, 5 FCC Rcd 6410, 6416 (1990). Second, there is no provision in the lease for acquisition of the ITFS equipment in the event that the lease is terminated. See *Turner Independent School District*, 8 FCC Rcd 3153, 3155 (1993). Third, Section 11 provides that Rotan will not compete in any way with the excess capacity lessee in any operation for a period of three years beyond the term of the lease. Such covenant not to compete unduly restricts Rotan's operation of the proposed ITFS facility. Although inconsistent with our requirements for excess capacity leases, these provisions neither reflect on Rotan's basic or comparative qualifications, nor preclude grant of an authorization. Nevertheless, Rotan's authorization will be conditioned upon conformity of the lease to Commission requirements. See *Milwaukee Regional Medical Instructional Television Station, Inc.*, 2 FCC Rcd 1472, 1473 (1987).

6. No petitions to deny or informal objections have been filed against Rotan's application, and we find Rotan fully qualified to be an ITFS licensee. We also conclude that grant of Rotan's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of Blackwell Consolidated Independent School District (BPLIF-920203DD) IS DENIED, and the application of Rotan Independent School District (BPLIF-920821DC) IS GRANTED, subject to the condition that within 30 days of the release of this Order, Rotan submit to the Chief, Distribution Services Branch for approval information demonstrating compliance with Commission requirements, including, if appropriate, an amended lease agreement conforming in the manner discussed herein.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PSO, Inc. File No. ITC-94-065

For Authority,
Pursuant to Section 214
of the Communications
Act of 1934, As Amended, to Resell
Private Line Service from Points
Located in the United States to
El Salvador

ERRATUM

Released: April 4, 1994

By the Chief, International Facilities Division:

1. On February 25, 1994 the Common Carrier Bureau released an Order, Authorization and Certificate in the above-captioned proceeding (DA 94-155). This Erratum:

a. deletes paragraph 8 of that Order; and

b. adds as paragraph 8:

IT IS FURTHER ORDERED that PSO shall file semi-annual reports of circuit additions, to the certified point, pursuant to Section 63.15(b) of the Commission's rules, 47 C.F.R. § 63.15(b), for private lines leased for the provision of private line services.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

DATA GENERAL TELECOMMUNICATIONS, INC. File No. I-T-C-94-038

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to Resell Services of Other Common Carriers to Provide Private Line Services and Switched Services between the United States and International Points.

ORDER AND CERTIFICATION

Adopted: March 18, 1994; Released: April 4, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the resale of international private lines for the provision of international private line services and resale of switched voice service for provision of switched services to the general public by Data General Telecommunications, Inc. (DGTI).[1]

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-038 IS GRANTED and DGTI is authorized to:

a. provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, C&W's Tariff F.C.C. No. 3, MCI's Tariff F.C.C. No. 1, and Sprint's Tariff F.C.C. No. 1, between the U.S. and overseas points listed in those tariffs; and

b. resell international private lines not interconnected to the public switched network for the provision of international private line services between the United States and each of the international points[2] specified in Appendix A.

3. IT IS FURTHER ORDERED that DGTI is authorized to lease, pursuant to the tariffs of authorized U.S. international common carriers, and operate a one-half interest in one 64-Kbps circuit for the provision of non-interconnected private line services between the U.S. and each of the international points listed in Appendix A.

4. IT IS FURTHER ORDERED that our authorization of the applicant to resell international private lines for the provision of non-interconnected private line service is limited to the provision of such private line service only between the U.S. and those point listed in the Appendix A hereto -- that is, private lines which originate in the U.S. and terminate in one of the points listed in the Appendix A, or which originate in one of the points listed in the Appendix A and terminate in the U.S. In addition, applicant may not -- and applicant's tariff must state that applicant's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the foreign administration affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, Phase II, First Report and Order, 7 FCC Rcd 559 (1991), *Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that neither DGTI nor any persons or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions which is denied to any other United States carrier by reason of any concession contract, understanding, or working arrangement to which DGTI or any such persons or companies controlling or controlled by DGTI are parties.

[1] In a letter accompanying DGTI's application, DGTI requests a determination that the presence of a foreign citizen as a corporate officer of DGTI's parent corporation Data General Corporation, will not adversely affect the public interest so as to prevent DGTI from being authorized by the Commission under Section 310(b)(4) of the Communications Act to operate as a common carrier. We note that the Section 310(b)(4) restrictions on foreign ownership apply to holders of certain specified radio licenses issued under Title III of the Communications Act, not Section 214 authorizations such as DGTI is applying for here. Therefore, a public interest determination under Section 310(b)(4) of the Communications Act is not required to grant the subject application. If in the future DGTI applies for a Title III radio license that is subject to the Section 310(b)(4) foreign ownership restriction, the Commission will make a determination at that time whether the presence of a foreign citizen as an officer of Data General adversely affects the public interest.

[2] *See* Appendix A for list of authorized international points. We note that should DGTI obtain any interest in facilities beyond the authorized international points for the purpose of providing common carrier services, including private line service, between the U.S. and other international points, such action would constitute an extension of lines under Section 214 of the Act. Therefore, under the provisions of the Commission's *International Competitive Carrier Policies*, 102 FCC 2d 812 (1985), *recon. denied* 60 R.R. 2d 1435 (1986), it would be necessary for DGTI to file additional applications for a certificate of public convenience and necessity under Section 214 to begin service to each additional country and for authority to acquire any facilities needed to provide service to such additional points.

6. IT IS FURTHER ORDERED that:

(a) DGTI shall file publicly any contracts entered into with other carriers or a contract summary in accordance with Section 203 of the Communications Act, 47 U.S.C. §203, and the *Interexchange Order*;[3]

(b) the services obtained by DGTI shall be made generally available to similarly situated customers at the same terms, conditions and rates; and

(c) DGTI shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that DGTI shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that DGTI shall file a copy of any operating agreements entered into with foreign correspondents with the Commission within 30 days of their execution.

9. IT IS FURTHER ORDERED that the applicant shall file semi-annual reports of circuit additions to certificated points, pursuant to Section 63.15 of the Commission's Rules, 47 C.F.R. §63.15, for private lines leased to provide resold private line service.

10. IT IS FURTHER ORDERED that this Order may be subject to future modification pursuant to the outcome of the *Phase II Third Further Notice* and any related proceedings.

11. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services DGTI seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

12. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Appendix A

Country
Italy
Sweden
Netherlands
France
Germany
Switzerland
Spain
United Kingdom
Canada
Mexico
Japan
Hong Kong
Singapore
Australia

[3] *See Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5902 (1991)(*Interexchange Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TW COMMUNICATIONS, INC. d/b/a TWC — File No. I-T-C-93-239

Application for authority to operate as an international resale carrier.

ORDER AND AUTHORIZATION

Adopted: March 23, 1994; Released: April 4, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-93-239 IS GRANTED, and TW Communications, Inc. d/b/a TWC (TWC)[1] is authorized to provide international switched communications services, including voice, facsimile and data service through the resale of the international switched voice services set forth in Sprint's Tariffs F.C.C. Nos. 1 and 2, C&W's Tariff F.C.C. No. 3, Allnet's Tariff F.C.C. No. 5, Wiltel's Tariff F.C.C. No. 2 and Metromedia's Tariff F.C.C. No. 2, between the contiguous U.S. and the international points named in those tariffs.

3. IT IS FURTHER ORDERED that TWC shall obtain any necessary operating arrangements in each of the countries to which it will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that neither applicant nor any persons or companies directly or indirectly controlling or controlled by applicant, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which applicant or any persons or companies controlling or controlled by applicant are parties.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

6. IT IS FURTHER ORDERED that:

(a) the applicant shall file publicly any contracts entered into with other carriers or a contract summary in accordance with Section 203 of the Communications Act, 47 U.S.C. §203, and the *Interexchange Order*;[2] and

(b) the services obtained by the applicant shall be made generally available to similarly situated customers at the same terms, conditions and rates.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61.

8. IT IS FURTHER ORDERED that nothing in this authorization shall be construed to include authorization for the transmission of money in connection with the services TWC seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order shall be construed as containing authority for the transmission of money.

9. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of the public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

[1] TWC applied initially as AT+D, Inc., but changed its name to Telnet Worldwide Communications, Inc. (TWCI) after AT&T submitted a Petition to Deny. AT&T subsequently withdrew its Petition to Deny. *See* Letter dated September 15, 1993 from Elaine McHale, Senior Attorney, AT&T, to William F. Caton, Acting Secretary, FCC. By Public Notice Report No. I-6874-A (released October 13, 1993), we requested comments on the change of applicant's name to TWCI. On October 20, 1993, Sprint Communications Company L.P. (Sprint) filed a Petition to Deny, which it withdrew after TWCI again changed its name to TWC. *See* Sprint Petition to Deny; Letter dated January 28, 1994 from Steven A. Reynolds, President, TWC and Thomas K. Crowe, Counsel, TWC, to William F. Caton, Acting Secretary, FCC; Letter dated February 9, 1994 from Phyllis A. Whitten, Attorney, Sprint, to William F. Caton, Acting Secretary, FCC; and Public Notice Report No. I-6926, released February 9, 1994.

[2] *See Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5902 (1991) (*Interexchange Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1376

In the Matter of

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands — RM 4436

ORDER

Adopted: February 24, 1994; Released: March 1, 1994

By the Commission:

1. Pursuant to Section 410(c) of the Communications Act, 47 U.S.C. §410(c), we hereby appoint the Honorable Reed E. Hundt to serve as Chairman of the Federal-State Joint Board in CC Docket No. 83-1376. The Honorable Reed E. Hundt will fill the vacancy created by the resignation of the Honorable Ervin S. Duggan. This Joint Board was established in 1985 to review issues related to the Alaska telecommunications market structure.[1] Under the provisions of the Act, each joint board is to be comprised of three Commissioners of the FCC, four state Commissioners, and is chaired by the Chairman of the FCC. With the appointment of the Honorable Reed E. Hundt as Chairman of the Joint Board, the Honorable James H. Quello and the Honorable Andrew C. Barrett will continue to serve as members of the Joint Board.

2. The National Association of Regulatory Utility Commissioners (NARUC) has nominated the Honorable Don Schroer to serve as a member of the Alaska Federal-State Joint Board.[2] Pursuant to Section 410(c) of the Act, we appoint the Honorable Don Schroer to be a member of the Federal-State Joint Board to fill the position recently vacated by the Honorable Susan M. Knowles. Henceforth a copy of all filings in this proceeding shall be served on the Honorable Reed E. Hundt and the Honorable Don Schroer at the following addresses:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

The Honorable Don Schroer
Chairman
Alaska Public Utilities Commission
1016 West Sixth Avenue
Suite 400
Anchorage, Alaska 99501

3. Accordingly, IT IS ORDERED, that the Honorable Reed E. Hundt, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. §410(c), shall serve as the Chairman of the Federal-State Joint Board in CC Docket No. 83-1376 effective upon adoption of this order.

4. IT IS FURTHER ORDERED, that the Honorable Don Schroer shall serve as a member of the Federal-State Joint Board in CC Docket No. 83-1376 effective upon adoption of this order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[1] Integration of Rates and Services, 50 F.R. 41714 (Oct. 15, 1985).

[2] Letter from Paul Rodgers, NARUC, to Chairman Reed Hundt, FCC, dated December 8, 1993.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Companies — Transmittal No. 234

Tariff F.C.C. No. 1
NYNEX Enterprise Service

ORDER

Adopted: March 22, 1994; Released: March 28, 1994

By the Acting Chief, Common Carrier Bureau:

1. On October 18, 1993, the NYNEX Telephone Companies (NYNEX) filed Transmittal No. 234 to introduce NYNEX Enterprise DS0 Prime Service (Prime Service) and NYNEX Enterprise DS0 Standard Service (Standard Service).[1] The existing version of Enterprise Service is an end-to-end DS0 service provided over fiber optic transport facilities and requires multiplexing equipment to be placed on the customer's premises. Prime Service would use multiplexing equipment provided by the customer and located on the customer's premises, thus unbundling the customer premises equipment (CPE) from Enterprise Service. Standard Service would use multiplexers provided by NYNEX, but that equipment would not be placed on the customer's premises.[2] NYNEX deferred the effective date of Transmittal 234 to April 18, 1994.

2. On November 2, 1994, the Independent Data Communications Manufacturers Association, Inc., (IDCMA) filed a petition to reject or, in the alternative, to suspend and investigate Transmittal 234. NYNEX filed its reply on November 9, 1993.

3. Transmittal 234 provides that customer access to CPE provided in conjunction with Prime Service "will be upon terms mutually agreed to by [NYNEX] and the customer." Tr. 234 at 7-68.3.1. According to IDCMA, these terms and conditions unlawfully limit customer access to the CPE. IDCMA Petition at 7-8. IDCMA further asserts that, although NYNEX proposes to unbundle the CPE multiplexers from its current offering of Enterprise Service, it has not unbundled the costs of this equipment in developing rates for Prime Service. Specifically, IDCMA alleges that the nonrecurring costs for Prime Service are overstated because they include CPE costs that NYNEX will not incur because the multiplexing equipment is provided by the customer. *Id.* at 8.

4. NYNEX asserts in its reply that it has sufficiently unbundled the CPE used with Prime Service and that the terms and conditions regarding customer access are necessary to ensure effective delivery of the remote installation and rearrangement of circuits and network monitoring functions offered with Enterprise Service. *Id.* at 8. NYNEX also maintains that its rates are properly supported, stating that there are certain nonrecurring costs associated with the provision of Prime Service channels that will be incurred whether or not multiplexing equipment is provided by the customer. *Id.* at 7.

5. The Common Carrier Bureau has reviewed the transmittals and all associated pleadings. We conclude that no compelling argument has been presented that the tariff revisions are so patently unlawful as to require rejection, and that no question has been presented that warrants investigation at this time.

6. Accordingly, IT IS ORDERED that the petition to reject or, in the alternative, to suspend and investigate the NYNEX Telephone Companies Transmittal No. 234, filed by the Independent Data Communications Manufacturers Association, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

[1] Revisions were made in Transmittal No. 283 which was filed on March 9, 1994 pursuant to special permission.

[2] NYNEX Transmittal No. 234, Description and Justification (D&J) at 2 (filed Oct. 18, 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Spectacor Broadcasting L.P. — File No. BR-910401YQ

For Renewal of License of
Station WIP(AM)
Philadelphia, Pennsylvania

MEMORANDUM OPINION AND ORDER AND NOTICE OF APPARENT LIABILITY

Adopted: August 12, 1993; Released: August 20, 1993

By the Commission: Commissioner Barrett concurring in the result.

I. INTRODUCTION

1. The Commission has before it for consideration: (i) a license renewal application for the captioned radio station; (ii) Petitions to Deny timely filed by the National Black Media Coalition (NBMC); jointly by the National Hispanic Media Coalition (NHMC) and ASPIRA, Inc. of Pennsylvania (collectively NHMC/ASPIRA); and jointly by the Philadelphia Lesbian and Gay Task Force, the Pennsylvania and Philadelphia chapters of the National Organization for Women (NOW), and ASPIRA, Inc. of Pennsylvania (collectively PLGTF) against the renewal application;[1] (iii) an opposition from the licensee; (iv) petitioners' responses to the licensee's opposition, and (v) the licensee's responses to staff letters of inquiry. Petitions filed by NBMC, NHMC/ASPIRA and PLGTF allege that the above station violated the Commission's equal employment opportunity (EEO) Rule and policies toward minorities. PLGTF also alleges that the station violated the Rule and policies regarding recruitment of women. In a separate petition, the three collective PLGTF parties joined by the Philadelphia chapters of ACT-UP, Black and White Men Together, and Custody Action for Lesbian Mothers, Inc. (PLGTF II) challenge the adequacy of WIP(AM)'s issue-responsive programming. The petitioners request that the Commission designate the licensee's renewal application for hearing and deny the application.

II. BACKGROUND

2. In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit "specific allegations of fact sufficient to show... that a grant of the application would be prima facie inconsistent with [the public interest, convenience, and necessity]." 47 U.S.C. Section 309(d)(1); *Astroline Com. Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline); Application of Dubuque T.V. Limited Partnership and Sage Broadcasting Corporation of Dubuque, Iowa for Assignment of Television License for KDUB-TV, Dubuque, Iowa*, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309(d)(1).

3. We note that the NBMC, the Philadelphia Lesbian and Gay Task Force, NOW, Black and White Men Together of Philadelphia, Custody Action for Lesbian Mothers, Inc., and ACT-UP of Philadelphia have failed to demonstrate party in interest status by filing affidavits from parties who are shown to be residents in the listening area of WIP(AM) or listeners to the station. *See Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, 98-99 (1980). Accordingly, we will treat these groups as informal objectors. 47 C.F.R. Section 73.3584(b); *see also Application of KDEN Broadcasting Co. for Renewal of License of Station KDEN, Denver, Colorado*, 55 Rad. Reg. 2d (P&F) 1311, 1311-1312 (1984). NHMC/ASPIRA have met the standing criteria.

III. EEO ISSUES

4. *Discussion.* The NBMC, NHMC/ASPIRA, and PLGTF derived their factual allegations from the licensee's EEO program and annual employment reports. Review of their allegations led us to conclude that they presented a prima facie case demonstrating that unconditional grant of the renewal application would have been inconsistent with the public interest. Section 309(d)(1) of the Communications Act, 47 U.S.C. Section 309(d)(1). *Astroline, supra.* Further inquiry was, therefore, necessary. *See Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC*, 854 F.2d 501, 506 (D.C. Cir. 1988) (*Beaumont); Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621 (D.C. Cir. 1978) (*Bilingual).* However, review of the entire record, including the licensee's responses to further inquiries, indicates that there are no substantial and material questions of fact warranting designation for hearing.

5. Section 73.2080 of the Commission's Rules requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission

[1] Collectively, the NBMC, NHMC/ASPIRA and PLGTF challenged the renewal applications of six radio stations in Philadelphia, Pennsylvania on equal employment opportunity (EEO) grounds. The parties who addressed programming issues at WIP(AM) in a separate petition to deny challenged the renewal applications of 13 Philadelphia radio stations. In November 1992, the licensee of WIP(AM) filed a request for expedited review of the WIP(AM) renewal application on the basis that the renewal challenges were the only impediment to grant of a pending application to assign the station's license to another party. We find that expedited review is appropriate and, accordingly, are addressing the renewal of WIP(AM) in the current *Order*. We will address the applications of the remaining stations in separate actions.]

focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080 (b) and (c) of the Commission's Rules, 47 C.F.R. Sections 73.2080 (b) and (c).

6. When a renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of sanctions or remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. *Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services*, 2 FCC Rcd 3967 (1987) (hereinafter *Broadcast EEO), petition for reconsideration pending; see also* 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters) (hereinafter *Clarification of Broadcast EEO). See e.g., Beaumont, supra; Bilingual, supra.*

7. A review of the licensee's 1991 EEO Program Report, opposition to the petitions to deny and responses to our inquiries reveals that the licensee had 37 overall, including 30 upper-level, full-time hiring opportunities from September 26, 1988, through March 27, 1991.[2] The licensee was able to identify the recruitment sources contacted for only seven positions as follows: *Philadelphia Inquirer* and postings inside the station. The licensee reported minority and female referrals from general sources as follows: *Philadelphia Inquirer* (two minority, 31 female), employee referrals (two minority, 10 female), and postings inside the station (two minority, 11 female). It reported that it contacted minority sources as follows: Lincoln University (two openings), Cheyney University (two openings), Philadelphia Community College (one opening), Temple University (one opening), and a Black-oriented newspaper, the *Philadelphia Tribune,* (three openings). The only referrals from minority sources were one female referral and one minority referral from the *Philadelphia Tribune.* The licensee also reported, in addition to the seven positions for which it knows it recruited publicly, that it specifically recruited and hired a minority and a woman for sales positions.

8. Because of incomplete records, the licensee had interview information for only 20 positions, which shows 144 total interviewees, of whom 12 were minority and 78 were women. Minorities were considered for 17 positions, 15 of which were upper-level. Women were considered for 23 positions of which 19 were upper-level.[3] Of the 37 hires, six were minority (Black) and 15 were women. Of 30 upper-level hires, four were minority and 11 were women.[4] In addition, the licensee reported that it offered upper-level full-time sales positions to two Black women in November and December 1989, but they declined the offers.

9. The arguments of the NBMC, NHMC/ASPIRA, and PLGTF may be summarized as follows: the licensee's EEO recordkeeping and efforts were inadequate, its recruitment sources failed to refer minority applicants, and it failed to use minority or female recruitment sources until the last few months of the term. Also, although the licensee's self-assessment of its EEO program for minorities and women has been inadequate, it proposes no remedial action. Furthermore, the licensee has failed to employ Hispanics and its employment of women and Blacks has been inadequate, particularly in upper-level positions. Population reports more recent than the 1980 census indicate that Hispanics now comprise more than three percent of the Philadelphia MSA labor force, instead of the 1.7% indicated in the 1980 figures.

10. In addition, PLGTF argues that EEO compliance should be evaluated on the basis of whether women and minorities are employed at full parity with their presence in the labor force, rather than the long-standing 50% of parity. Also, PLGTF argues that the Commission should amend its non-discrimination rule to include sexual orientation. It states, however, that sexual orientation need not be applied to affirmative action requirements in the EEO Rule.[5]

11. The licensee responded that it has recruited minorities and women for openings during the license term, using various sources, including minority sources, but has recruitment records for only seven of its 37 openings. It acknowledged that it has failed to "maintain adequate records of the referrals it received" but noted the number of minorities and women it interviewed and hired, as discussed *infra.* The licensee denied that it only started using minority sources in the last months of the term, noting that it used a minority newspaper, the *Philadelphia Tribune,* since at least March 1989. To improve its EEO record, it claimed to have held a series of meetings in the fall of 1989 which were prompted by the realization that it was having difficulty recruiting women for upper-level positions. It stated that it increased its EEO efforts which resulted in increases in female upper-level employment in 1990 and 1991 and minority upper-level employment in 1991. Following assessment meetings in February and

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[2] The licensee has owned WIP(AM) since November 19, 1987. Its license term ended on July 31, 1991.

[3] We note that these numbers include positions with no interviewee records but where a minority or woman was selected.

[4] The labor force of the Philadelphia, Pennsylvania MSA is 42.7% female and 18.2% minority (15.4% Black, 1.7% Hispanic, 1.0% Asian/Pacific Islander, and 0.1% American Indian). The licensee's Annual Employment Report for 1988 indicates that the licensee employed 36 persons overall (25 upper-level) with two (5.6%) minorities, both Blacks in upper-level positions (8.0% of upper-level positions). All minorities employed by the licensee during the license term were Black. It employed 11 (30.6%) women overall with five (20.0%) in upper-level positions. In 1989, the licensee employed 37 persons overall (24 upper-level) with three (8.1%) Blacks, two (8.3%) of whom were in upper-level positions. It employed 10 (27.0%) women, two (8.3%) in upper-level positions. In 1990, the licensee employed 35 persons (25 upper-level) with four (11.4%) Blacks, two (8.0%) in upper-level positions. It employed 11 (31.4%) women, five (20.0%) in upper-level positions. In 1991, the licensee employed 37 persons overall (30 upper-level) with five (13.5%) Blacks, three (10.0%) in upper-level positions. It employed 13 (35.1%) women, nine (30.0%) in upper-level positions.

[5] The petition to deny process is not the proper forum for us to announce new processing criteria or to change our rules to include sexual orientation under discrimination. Therefore, we dismiss this portion of PLGTF's petition.

March of 1991, the licensee stated that it phased in new EEO practices from April to August 1991. It said those new steps include contacts with new sources,[6] expanded recordkeeping, designating a station official to oversee the EEO program, more formal hiring procedures, and sponsoring a minority intern at the station.

12. Regarding Hispanic recruitment, the licensee cited *Letter to Howard B. Dolgoff*, 5 FCC Rcd 7695, 7696 (1990) (concerning Station WTHZ-FM, Tallahassee, Florida) (*WTHZ-FM*), and *Applications of Certain Television Stations Serving Communities in the State of California*, 6 FCC Rcd 2340, 2344 n.4 (1991) (*California*).[7] Using 1980 census data, it stated that Hispanics comprise only 1.7% of the station's job market, not what the Commission considers to be a statistically "significant" number. It asserted, however, that it has included Hispanics in its minority recruitment efforts and noted that it added an Hispanic recruitment source in the last four months of the license term.

13. The licensee argues that its record is similar to that of Stations WDXY(AM)/WIBZ-FM, as described in *Applications of Dailey & Reich for Renewal of License of Station WDXY, Sumter, South Carolina, and Station WIBZ-FM, Wedgefield, South Carolina*, 6 FCC Rcd 4672 (1991), wherein the Commission renewed the stations' licenses unconditionally despite problems with recordkeeping.

14. After reviewing the record of Station WIP(AM), we find no substantial and material questions of fact sufficient to warrant a hearing. *See Astroline, supra.* The licensee engaged in some recruitment and hired and employed minorities and women. We find no evidence indicating that the licensee engaged in discrimination. However, the licensee's efforts to recruit minorities and women were deficient. Specifically, we are concerned that the licensee has no recruitment records for 30 of 37 positions. Although the licensee claims to have contacted a minority-oriented source as early as 1989 and received a number of minority applicants, it could not have engaged in meaningful self-assessment with so few records. We believe $12,500 is an appropriate base forfeiture for this violation of the Commission's EEO Rule. Thus, we will grant the renewal application of WIP(AM) subject to a Notice of Apparent Liability for $12,500 and reporting conditions.

IV. PROGRAMMING ISSUES

15. PLGTF II filed a Joint Petition challenging the licensee's programming efforts. *See* para. 1 and note 1, *supra.* Petitioners allege that WIP(AM) did not present sufficient issue-responsive programming overall and that its coverage of specific issues was inadequate. In particular, petitioners challenge the quantity and quality of the licensee's programming covering the issue of AIDS and the concerns of women, African-Americans, lesbians, gays, and Hispanics. Petitioners allege that these groups in the aggregate constitute a majority of Philadelphia's population, and that the station's alleged failure to serve these groups is, therefore, a failure to serve the community as a whole. In support of their position, petitioners submit a study in which they evaluate WIP(AM)'s programming based on information contained in the station's public inspection file for the years 1989 and 1990.

16. Several years ago, the Commission had the opportunity to examine similar allegations in reviewing a challenge by several of the same parties to the license renewals of Philadelphia television stations. *Philadelphia Television Stations*, 5 FCC Rcd 3847 (1990), *recon. denied*, 6 FCC Rcd 4191 (1991). While the methodology of the television study differs somewhat from the radio study in the present case, the basic thrust of the arguments in the two proceedings are the same. Thus, much of our analysis in the Philadelphia television proceeding also holds true for the current challenge to the renewal application for radio station WIP(AM).

17. *The Broadcaster's Programming Obligation.* Broadcast licensees have an affirmative obligation to present informational programming addressing issues and problems of importance to their communities. *Deregulation of Radio*, 84 FCC 2d 968, 982 (1981); *recon. granted in part and denied in part*, 87 FCC 2d 797, *aff'd in part and remanded in part sub nom., Office of Communications of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). In this regard, the Commission affords licensees broad discretion to choose, in good faith, the issues it believes are of concern to the community and the best way to address those issues. Thus, we do not require licensees to present any specific quantity of issue-responsive programming, to address any particular topic, or to cover every aspect of a topic addressed. *Philadelphia Television Stations*, 5 FCC Rcd at 3847. The Commission intervenes only if the licensee abuses its discretion, *i.e.*, if a licensee is unreasonable or discriminatory in its selection of issues or offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation. *Id.* at 3848.

18. In keeping with these requirements, a licensee cannot in its selection of issue-responsive programming ignore the needs and problems of ethnic minorities or other groups that represent a substantial segment of its community. *See Time-Life Broadcast, Inc.*, 33 FCC 2d 1081, 1093 (1972); *Alabama Educational Television Commission*, 50 FCC 2d 461 (1975). Licensees are not, however, required to address every issue of importance to a group, to address the needs of every group in the community, or to present programming in proportion to a group's percentage in the overall community population. *Philadelphia Television Stations*, 5 FCC Rcd at 3848 and cases cited therein. Further, the station need not present programming specifically designed for minority groups if the station's programming for the community as a whole also is responsive to the needs of minorities within that community. *See Puerto Rican Media Action and Educational Council, Inc.*, 51 FCC 2d 1178, 1181-82 (1975).

19. *Discussion.* Given this background, and assuming *arguendo* that the facts alleged are true and representative of the license period, we find no abuse of the licensee's

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[6] The licensee did not identify the new sources other than an Hispanic source, Congreso de Latinos Unidos.

[7] The Commission found in *WTHZ-FM* that minorities comprised 27.6% of the relevant labor force and that Hispanics comprised only 1.2%. The Commission stated that it considers a station's overall minority employment in determining EEO compliance but that it focuses principally on the dominant minority or non-dominant minorities that are present in significant numbers. *See WTHZ-FM* at 7696. In *California*, the Commission also stated that it evaluates EEO efforts toward all minorities but focuses primarily on the dominant minority and found that Hispanics were the dominant minority in job markets in which they comprised from 53% to 71% of minorities. *See California* at 2344 n.4.

broad discretion with respect to the presentation of issue-responsive programming. With respect to petitioners' allegation that the licensee's selection of programming was unreasonable or discriminatory, we find no prima facie case. The petitioners' own study shows that the licensee addressed a number of issues specifically relevant to women, Blacks, and lesbians and gays, albeit not the issues that the petitioners would have most liked addressed.[8] As to Hispanics, the one group for which the station's public file allegedly did not identify any specific programming, this group comprises only a small percentage of Philadelphia's population,[9] and so the alleged non-coverage of specific Hispanic issues, without more, is insufficient to support a finding of any abuse of discretion. Further, for each of the groups identified, petitioners have not shown that the groups' needs would not be met in whole or in part by the station's overall issue-responsive programming for the general community.[10] With respect to the issue of AIDS, the petitioners' study shows that the licensee addressed the issue in a number of ways. The licensee, in its Opposition, supplies additional information showing that it presented programming addressing the issue of AIDS and topics of concern to each of the groups identified. While the licensee did not address every issue of concern to each group or every facet of the issues addressed, the Commission does not require it to do so. *See Miami Valley Broadcasting Corp.*, 48 FCC 2d 177, 186 (1974). The licensee's selection of issues appears reasonable and non-discriminatory, having included many programs addressing issues of concern to minorities and prominently featuring minority hosts and guests.

20. Further, based on the entire record before us, we do not find the amount of issue-responsive programming on WIP(AM) inadequate.[11] Even assuming for the sake of argument that petitioners presented a prima facie case on this matter, that case would be rebutted by information in the licensee's response, leaving no substantial and material question of fact. Petitioners base their allegations on the information in the station's Issues/Programs lists. Such lists must identify the licensee's most significant issue-responsive programs but need not enumerate every program aired. *See Office of Communication of United Church of Christ v. FCC*, 779 F.2d 702, 712 (D.C. Cir. 1985). We, therefore, permit licensees to provide us with additional information not listed in the Issues/Programs lists to respond to an argument that they provided only a nominal amount of issue-responsive programming. *Philadelphia Television Stations*, 5 FCC Rcd 3847, 3851 n.13.

21. In response to petitioners' allegations, the licensee submits additional information about the amount of general and minority-specific issue-responsive programming on the station. The licensee includes information beyond that which it listed on its Issues/Programs lists and covers a longer period within the license term than that in petitioners' study. The licensee states that every week it airs two hours of locally produced public affairs programs in the form of the following three shows: Philadelphia Futures, C.A.R.I.E. Line, and Healthline. In addition, the licensee carries network programs such as the Larry King Show and the Jim Bohannon Show which it states often include segments addressing important issues. The station also airs public service announcements, but does not generally report these on its Issues/Programs lists. Furthermore, the licensee states that, consistent with the station's sports format, the station airs sports interviews and call-in shows throughout each day which often discuss the problems of women, minorities, and gays in a sports context. Examples of topics covered include the role of women in sports and in sports journalism (prompted by an allegation of sexual harassment of a female reporter in a football locker room), the location of sporting events at country clubs which do not accept minorities as members, and the issues associated with being a gay umpire in major league baseball. The petitioners do not in their Reply address any of this additional programming, continuing to rely on the original numbers in their study.

22. Given the record before us, it appears that the licensee made a reasonable effort to present, within its discretion, sufficient programming addressing the needs and problems of Philadelphia as a whole and of the groups that make up a substantial portion of that community. Thus, we find no substantial and material question of fact on this issue.

V. CONCLUSION

23. After considering the information before us, we find that a hearing is not warranted and the record of the licensee of WIP(AM) supports grant of its renewal application. The license of WIP(AM) will be renewed subject to a Notice of Apparent Liability for $12,500 and reporting conditions because of its deficient EEO recruitment efforts.

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[8] The petitioners identify 10 issues as important to women, 17 issues as important to Blacks, .15 issues as important to the lesbian and gay community, and 10 issues as important to Hispanics, none of which WIP(AM) addressed. However, petitioners' study of the licensee's public file programming data indicates that the station addressed 15 other issues of concern to women, five other issues of concern to Blacks, and four other issues of concern to the lesbian and gay community.

[9] Petitioners allege that Hispanics represent 3.82% of the overall Philadelphia population. Given this small figure, Hispanics would not comprise a substantial segment of the Philadelphia population for the purpose of our analysis of issue-responsive programming.

[10] In its Opposition, the licensee alleges that its programming addresses a wide range of issues of importance to the citizens of Philadelphia regardless of their race, sex, or sexual orientation. These issues include the problems of crime, drugs, education, child abuse, homelessness, poverty, the disabled, parenting, mental health, humanitarian concerns, the local, national, and international economy, aging, and general health issues.

[11] Based on a study of all programming reported in the station's public file, petitioners allege that WIP(AM) devoted an average of 446.8 minutes per month (approximately 1% of its overall airtime) to issue-responsive programming. With respect to issues of specific concern to women and minorities, they allege an average of 72.5 minutes per month (16.2% of overall issue-responsive programming or .2% of overall airtime). While we will consider such percentages as one factor in evaluating a licensee's performance, "arguments based solely on the failure to present amounts of non-entertainment programming will not be appropriate." *Philadelphia Television Stations*, 6 FCC Rcd at 4192, citing *Commercial TV Stations*, 98 FCC 2d 1076, 1093 (1984).

VI. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that the informal objection filed by the NBMC, the Philadelphia Lesbian and Gay Task Force, NOW, Black and White Men Together of Philadelphia, Custody Action for Lesbian Mothers, Inc., and ACT-UP of Philadelphia against the licensee of WIP(AM) IS DENIED.

25. IT IS FURTHER ORDERED that the petitions to deny filed by the NHMC and ASPIRA, Inc. of Pennsylvania, against the licensee of WIP(AM) ARE DENIED.

26. IT IS FURTHER ORDERED that the license renewal application filed by Spectacor Broadcasting L.P. for Station WIP(AM) IS GRANTED subject to the EEO reporting conditions specified herein.[12]

27. IT IS FURTHER ORDERED that, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, this document constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of $12,500 for the licensee of WIP(AM).

28. IT IS FURTHER ORDERED that the licensee of Station WIP(AM) file an original and one copy of the following information on April 1, 1994, April 1, 1995, and April 1, 1996:

(a) For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title, date of hire, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired. The list should also note which recruitment sources were contacted;[13]

(b) a list of employees as of the March 1, 1994, payroll period for the first report and as of the March 1, 1995, and the March 1, 1996, payroll periods for the second and third reports, by job title, indicating part-time or full-time status (ranked from the highest paid classification), date of hire, sex and race or national origin;

(c) details concerning the station's efforts to recruit minorities for each position filled during the period specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any relevant information with regard to the station's EEO performance and efforts thereunder.

29. IT IS FURTHER ORDERED, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notice of Apparent Liability to all parties.

30. The reports are to be filed with the Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch. Should the parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch at 202-632-7069. Regarding the forfeiture proceedings, the licensee of WIP(AM) may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order and Notice of Apparent Liability. Any comments relating to its ability to pay should include those financial letters set forth in the noted attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[12] In this regard, we are mindful of a pending application for assignment of license of WIP(AM) from Spectacor Broadcasting L.P. to Infinity Broadcasting Corporation of Philadelphia (File No. BAL-921001EB). In the event that the license is transferred to a new licensee, the reporting conditions will apply to the assignee upon the consummation of the sale or the transfer. *See Woolfson Broadcasting Corporation*, 4 FCC Rcd 6160 (1989); *Arcadia, Florida*, 5 FCC Rcd 3748, 3750 n.8 (1990); *License Renewal Application of Duffy II Corporation For Station KESZ-FM, Phoenix, Arizona*, 6 FCC Rcd 1876, 1879 n.4 (1991).

[13] Such a list might start: (1) News Director: Officials and Managers; Full-time.

3 Applicants:	1 White female	A.W.R.T.
	1 Black male	Urban League
	1 Black female	NAACP

Sources Contacted: Local Newspaper, A.W.R.T., Urban League and NAACP.

Selected: Black male (12/19/93).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-27

In re Applications of

CUMBERLAND COMMUNITIES COMMUNICATIONS CORP. File No. BPED-920508MD
(Hereafter "Cumberland")
Pioneer, Tennessee
Req: 89.3 MHz; Channel 207A
0.3 kW (H&V); 234 meters (H&V)

THE MOODY BIBLE INSTITUTE OF CHICAGO File No. BPED-920810MA
(Hereafter "Moody")
Crossville, Tennessee
Req: 89.3 MHz; Channel 207A
0.500 kW (H&V); 425 meters (V)

For Construction Permit for a
New Noncommercial, Educational
FM Station

HEARING DESIGNATION ORDER

Adopted: March 17, 1994; Released: April 5, 1994

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial, educational FM station.

2. *Moody.* Moody seeks a waiver of 47 C.F.R. § 73.1125(a)(4) to operate its proposed Crossville facility as a satellite station of commonly owned station, WMBW-FM, Chattanooga, Tennessee. In order to ensure that local issues in Crossville will be met, Moody has agreed to undertake the following:

A. Ascertain the problems, needs and interests of Crossville and address these through its programming.

B. The ascertainment will be conducted by a local representative of Moody who will be located in Crossville and by periodic visits to Crossville by management employees of Moody.

C. Develop programming specifically designed to address the needs and interests of Crossville based on the results of the ascertainment survey.

D. Maintain a toll-free telephone line between Crossville and the studio of WMBW-FM in Chattanooga.

3. A "satellite" station has been defined by the Commission as one "operating on a channel specified in the ... Table of Assignments and meeting all of the technical requirements of our rules, but one which usually originates no local programming .... It rebroadcasts the programming of the parent station." *Multiple Ownership Rules,* 3 RR 2d 1554, 1562 (1964). Satellite stations involve deviations from such Commission regulations as the station main studio location rule (Section 73.1125).

4. The Commission has stated that "we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate satellite' stations that do not necessarily meet the requirements of a main studio. These stations, however, have not been permitted to ignore local service obligations, and waivers generally have been granted only upon a showing that the local community would be served." *Memorandum Opinion and Order* in MM Docket No. 86-406, 3 FCC Rcd 5024 (1988). Thus, local needs should be met by this applicant.

5. We have determined that Moody has established that its centrally programmed simultaneous schedule will serve the problems, needs and interests of Crossville. Accordingly, in the event a construction permit is issued to Moody as a result of this proceeding, we will waive the provisions of 47 C.F.R. § 73.1125(a)(4).

6. *Other Matters.* Moody's and Cumberland's proposals are for different communities. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

7. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University,* 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

8. Except as may be indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act

of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

10. IT IS FURTHER ORDERED, That in the event a construction permit is awarded to Moody as a result of this proceeding, in light of the discussion in paragraphs 2 through 5, hereinabove, the provisions of 47 C.F.R. § 73.1125(a)(4) ARE HEREBY WAIVED.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein, shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Linda B. Blair, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TeleCourier Communications Corporation — File No. 416MS0002

Notice of Apparent Liability for Forfeiture Penalty for Stations KSA746 and KRM966 in the Public Land Mobile Service at Bloomington, Illinois

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 31, 1994; Released: April 6, 1994

By the Chief, Mobile Services Division:

1. On March 8, 1989, a stock transfer took place which resulted in a *pro forma* transfer of control of TeleCourier Communications Corporation (TeleCourier), the licensee of Public Land Mobile Stations KSA746 and KRM966, located at Bloomington, Illinois. The *pro forma* transfer of control in this case involved the transfer of negative control[1] of TeleCourier. The particulars are as follows.

2. On July 28, 1993, an application for Commission consent to the transfer of control from the Shareholders of TeleCourier to David J. Segneri and Kristyne Segneri was filed. The application disclosed the *pro forma* transfer of control. It appears that prior to March 8, 1989, the Segneri's, Edward Saari, and Louise Saari each held 25 percent of TeleCourier's voting stock, and no single shareholder had *de jure* control of TeleCourier. As a result of the transfer, in which the Saari's sold their stock in TeleCourier back to TeleCourier, David Segneri and Kristyne Segneri each consequently held 50 percent of the issued and outstanding stock of TeleCourier, but neither shareholder acquired *de jure* control. Prior to, and after the transfer, David Segneri was TeleCourier's President and General Manager, thereby maintaining *de facto* control of TeleCourier. At the time of the transfer, the parties did not realize that it was necessary pursuant to the Commission's Rules to obtain prior Commission consent for the *pro forma* transfer. They argue that they did not believe that any transfer of control was involved because no single shareholder either would give up or acquire a majority of TeleCourier's voting stock. The concept of negative control was not recognized by the parties at the time. Upon learning of the requirement for Commission consent to the transfer, the parties requested that their Washington counsel prepare the necessary application, which was filed on July 28, 1993.[2]

3. Section 310(d) of the Communications Act provides in relevant part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

Similarly, Section 22.39 of the Commission's Rules states:

> (a) *Approval required.* Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission.
>
> (1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

The March 8, 1989, stock transfer constituted an unauthorized *pro forma* transfer of control because a non-controlling 50 percent interest in TeleCourier was transferred without Commission approval. Consequently, an apparent violation of Section 310(d) of the Communications Act and Section 22.39(a)(1) of the Commission's Rules has occurred based upon the unauthorized *pro forma* transfer of control.

4. Section 503(b) of the Communications Act states in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter ... shall be liable to the United States for a forfeiture penalty.

We find that the unauthorized *pro forma* transfer of control of TeleCourier constitutes willful and repeated conduct within the terms of the statute because the March 8, 1989, stock transfer was made consciously and deliberately and remained unauthorized for more than one day.[3]

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[1] Negative control exists "... in cases where [each of] two parties ... owns exactly 50 percent of a licensee's stock ...." *Canton 67, Ltd., Debtor-in-Possession,* 7 FCC Rcd 736, 738 (1992).

[2] Contemporaneously filed with the *pro forma* transfer of control application is a request by TeleCourier for special temporary authorization (STA) to continue to operate the two captioned stations pending Commission action on the *pro forma* transfer of control. Commission action on the *pro forma* transfer of control application and the request for STA will be dealt with separately.

[3] Section 312(f)(1) of the Communications Act, 47 U.S.C. § 312(f)(1), provides:

5. Pursuant to the Commission's *1993 Policy Statement, Standards for Assessing Forfeitures,* 8 FCC Rcd 6215 (1993), the base forfeiture amount for an unauthorized *pro forma* transfer of control is $5,000. Consistent with this *Policy Statement,* we are adjusting the forfeiture downward to $3,500 because TeleCourier voluntarily disclosed the unauthorized *pro forma* transfer of control.

6. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, TeleCourier Communications Corporation IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of Three Thousand Five Hundred Dollars ($3,500) for willful and repeated violations of the aforementioned statutory and rule provisions. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding. to the Commission within thirty (30) days of the release date of this Notice, payable to the order of the Federal Communications Commission to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

8. A copy of this Notice is being sent to TeleCourier Communications Corporation, 520 North Center Street, Bloomington, Illinois 61701-2902.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services
Division
Common Carrier Bureau

The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.,* 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act, 47 U.S.C. § 312(f)(2), provides:

The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition applies to Section 503(b) as well. *See* H. R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Computer Guys NAL/Acct. No. 215SF0023
Burlingame, CA

ORDER

Adopted: March 30, 1994; Released: April 6, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. The Computer Guys filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued for violation of Section 302 of the Communications Act of 1934, as amended. (the Act), 47 U.S.C. §302, and Sections 2.803, 15.3(s) and 15.101(a) of the Commission's Rules, 47 C.F.R. §§ 2.803, 15.3 and 15.101. For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $5,600.

II. BACKGROUND

2. On July 31, 1992, the Commission's San Francisco Office issued a Notice of Apparent Liability (NAL) to The Computer Guys. The penalty was imposed for marketing Class B personal computers without proper Commission authorization. Based on the response from The Computer Guys, the San Francisco Office issued a Notice of Forfeiture (NOF) for $7,000 on October 28, 1992, from which Petitioner now appeals. The Petitioner contends it did not violate the rules because it is not a retail seller, but a value added re-seller who does not manufacture the devices.

III. DISCUSSION AND CONCLUSION

3. The arguments raised at paragraphs 2, 3 and 4 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition as well as review of the NAL and NOF, reveals that no issues have been raised which warrant mitigation of the forfeiture. We are, however, reducing the amount of the forfeiture because Petitioner has no record of prior violation of Commission rules. Thus, the forfeiture amount will be reduced accordingly.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT The Computer Guys must pay the forfeiture amount of five thousand six hundred dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215SF0023 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

5. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Act, U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED in part and DENIED in all other respects.

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to The Computer Guys.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 89-552

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Provide
for the Use of the 220-222 MHz
Band by the Private Land Mobile
Radio Services

ORDER

Adopted: March 28, 1994; Released: March 30, 1994

By the Chief, Private Radio Bureau:

1. On July 30, 1992, certain aspects of the Commission's procedures for filing and acceptance of 220-222 MHz license applications were appealed to the United States Court of Appeals for the District of Columbia Circuit.[1] As a result, we conditioned all grants of 220-222 MHz licenses upon the outcome of this appeal. We granted each non-nationwide 220-222 MHz licensee, regardless of its initial authorization date, an automatic extended period of 120 days from the date of the appeal's final disposition by the courts, to construct and place its licensed facilities in operation.[2]

2. On March 18, 1994, the pending appellate case upon which we conditioned these license grants was dismissed.[3] This action initiated the 120-day extended construction period granted to each non-nationwide 220-222 MHz licensee.

3. On February 15, 1994, the law firm of Keller and Heckman, on behalf of various 220 MHz licensees, requested that the Commission extend the time to construct non-nationwide 220-222 MHz facilities from 120 days after resolution of *Evans v. Federal Communications Commission* to 240 days after its resolution. Keller and Heckman based this request on: (1) the unanticipated prompt appellate finality achieved by settlement of this matter; (2) the probable inability of 220-222 MHz equipment vendors to accommodate, within a 120-day time frame, the thousands of equipment orders that are likely to be placed with the advent of a settlement; and (3) the likelihood that such an extension will result in the provision of 220-222 MHz local service to the public more quickly than through the automatic cancellation of existing licenses followed by the selection of new licensees.

4. Keller and Heckman indicated that most 220-222 MHz non-nationwide licensees "have been highly reluctant to commit to decisions on equipment purchasing, financing, system construction and management contracts while the air of uncertainty as to license retention created by the *Evans* case[4] continues to prevail. Keller and Heckman stated that the requested extension would allow licensees the requisite time needed to address these matters.

5. Therefore, for good cause shown, IT IS ORDERED THAT the deadline for licensees to construct their non-nationwide 220-222 MHz facilities and place them in operation IS HEREBY FURTHER EXTENDED. All licensees of such stations authorized on or before the release date of this Order must construct their facilities and place them in operation on or before December 2, 1994.[5]

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Deputy Chief, Private Radio Bureau

[1] See Evans v. Federal Communications Commission, Case No. 92-1317 (D.C. Cir. filed July 30, 1992).

[2] See Public Notice, Lottery for 220-222 MHz Private Radio Land Mobile "Local" Channels, DA-1231, 57 Fed. Reg. 41935, 41936 (September 14, 1992).

[3] Order, Per Curiam, Evans v. Federal Communications Commission, Case No. 92-1317 (D.C. Cir. March 18, 1994).

[4] Request for Additional Time to Construct 220 MHz Private Land Mobile Radio Systems, filed by Keller and Heckman, February 15, 1994, at 2.

[5] All licensees of non-nationwide 220-222 MHz stations authorized after the release date of this Order must construct their facilities and place them in operation within eight months of the date of initial license grant. See 47 C.F.R. § 90.725(f).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation,
Complainant,

v. File No. E-93-006

American Telephone and Telegraph Co.,
Defendant.

Order

Adopted: March 31, 1994; Released: April 8, 1994

By the Chief, Formal Complaints & Investigations Branch, Enforcement Division, Common Carrier Bureau

1. On October 5, 1992, MCI Telecommunications Corporation (MCI) filed the above-captioned formal complaint against American Telephone & Telegraph Company (AT&T), alleging that certain AT&T tariffed term plans for 800 inbound service are in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), and inconsistent with a series of orders issued by the Commission in the Docket 90-132 *Interexchange Proceeding*.[1] AT&T answered and also counterclaimed, arguing that if its tariffed 800 plans are unlawful, then MCI's comparable stand-alone 800 term plans and MCI's tariffed offerings that bundle 800 service with other services are likewise unlawful.[2] On June 10, 1993, MCI moved to dismiss the counterclaim.[3]

2. On March 21, 1994, MCI and AT&T filed a joint motion to dismiss the complaint and counterclaim, stating that their respective claims and contentions have been mooted by the *March 1993 Order* and the *July 1993 Order*.[4]

3. We are satisfied that granting the parties' motion to dismiss the complaint and counterclaim will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Comission.

4. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 201(b) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201(b) and 208, that the formal complaint filed on October 5, 1992, by MCI Telecommunications Corporation against American Telephone and Telegraph Company IS DISMISSED.

5. IT IS FURTHER ORDERED that the counterclaim filed on November 23, 1992, by American Telephone and Telegraph Company against MCI Telecommunications Corporation IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints &
Investigations Branch
Common Carrier Bureau

[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, *Report and Order*, 6 FCC Rcd 5880 (1991) (*Report and Order*); *Order*, 6 FCC Rcd 7255 (Com. Car. Bur. 1991); *Memorandum Opinion and Order*, 6 FCC Rcd 7569 (1991); *Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 2677 (1922); *Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 2659 (1993) (*March 1993 Order*); *Second Report and Order*, 8 FCC Rcd 3668 (1993), petitions for reconsideration pending; *Memorandum Opinion and Order*, 8 FCC Rcd 5046 (1993) (*July 1993 Order*).

[2] AT&T Answer and Counterclaim, filed Nov. 23, 1992.

[3] MCI Motion to Dismiss, filed June 10, 1993 (*citing* the *March 1993 Order*, n.1 , *supra*).

[4] *See* note 1, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE & TELEGRAPH CO.
GTE HAWAIIAN TELEPHONE CO., INC.
MCI INTERNATIONAL, INC.
WORLD COMMUNICATIONS, INC.

File No. I-T-D-94-002

Application for authority to discontinue operation of the TPC-2 Cable System and to modify the Cable Landing License.

ORDER AND AUTHORIZATION

Adopted: March 28, 1994; Released: April 8, 1994

By the Chief, International Facilities Division:

1. The above-captioned uncontested application, filed on January 7, 1994 by American Telephone & Telegraph Co., GTE Hawaiian Telephone Co., Inc., MCI International, Inc. and World Communications, Inc. (Joint Applicants), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to permanently discontinue operation of the TPC-2 cable system and to modify the TPC-2 submarine cable landing license accordingly. The application was placed on public notice on January 26, 1994. No comments were received.

2. The TPC-2 cable system connects Makaha, Oahu, Hawaii; Tanguisson Point, Guam; and Minatogawa, Okinawa, Japan. The Commission's Order, released June 15, 1973 authorized the construction and operation of the Cable System, having a basic capacity of 845-3khz voice-grade circuits. The cable system was placed in service in 1975. It is a Bell System-designed SF type, single, submarine, armorless cable composed of two-way rigid transistorized repeaters, for which off-the-shelf replacement parts are no longer easily obtainable. The joint applicants state that unexpected corrosion of repeater connections has led to transmission degradation. The joint applicants also state that all Indefeasible Right of User (IRU) holders have been notified and arrangments have been made to transfer all traffic to other facilities.

3. Upon review of the application, we find that the TPC-2 Cable System has reached the end of its useful service life and all services have been transferred from TPC-2 Cable System to other facilities. Thus, there will be no impairment of service to any community or part of a community formerly served by the TPC-2 cable system as a result of its retirement.

4. Accordingly, IT IS HEREBY CERTIFIED that neither the present nor the future public convenience and necessity will be adversely affected by the discontinuance of use and operation by the Joint Applicants of the TPC-2 Cable System and the substitution of other transpacific facilities.

5. IT FURTHER IS ORDERED that Cable Landing License, File No. S-C-L-46 IS HEREBY MODIFIED to delete the TPC-2 Cable System.

6. IT IS FURTHER ORDERED that within 60 days after the release of this order, the Joint Applicants shall notify the Commission of the accounting treatment they intend to use in retiring the TPC-2 Cable System.

7. IT IS FURTHER ORDERED that upon discontinuance of use and operation of the TPC-2 Cable System, the Joint Applicants shall notify the Commission thereof and submit to the Commission for cancellation of any submarine cable landing license they possess covering the TPC-2 Cable System.

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applicantions for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-94-080

Application for authority to make available facilities in the U.S. Bahamas and St. Thomas-Venezuela-2 Cables.

ORDER AND AUTHORIZATION

Adopted: March 7, 1994; Released: April 8, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that grant of the application is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-080 IS GRANTED, and American Telephone and Telegraph Company (AT&T) is authorized to:

a. make available to World Communications, Inc. on an Indefeasible Right of User (IRU) basis a half-interest in one circuit in the U.S.-Bahamas cable; and

b. make available to MCI International, Inc. and Compania Anonima Nacional Telefonos de Venezuela jointly, on an IRU basis, a whole interest in 12 circuits in the St. Thomas-Venezuela-2 cable.

3. Nothing in this order shall be construed as superseding any of the conditions set forth in any previous Commission Order dealing with the U.S.-Bahamas and St. Thomas-Venezuela-2 cable systems.

4. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of this Order's public notice date (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

UNITED STATES LIBERIA RADIO CORPORATION — File No. ITD-94-001

Application for authority to discontinue International Fixed Radio Service between Akron, Ohio and Harbel, Liberia; Stations WQA27, WQB20, WQB23, WQB25, WQB29, WQB35, and WQB39

UNITED STATES LIBERIA RADIO CORPORATION

BRIDGESTONE/ FIRESTONE, INC. — File No. C4-88-007-TC

Application for consent to the transfer of U.S. Liberia Radio Corporation to Bridgestone-Firestone, Inc.

ORDER AND AUTHORIZATION

Adopted: March 29, 1994; Released: April 8, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.10(c) of the Commission's rules, to discontinue the provision of international fixed radio service between the U.S. and Liberia. Also before the Commission is a request filed on behalf of U.S. Liberia Radio Corporation (USLRC) to dismiss the application for consent to the transfer of USLRC to Bridgestone/Firestone at such time as USLRC's application to discontinue service is granted.[1]

2. Upon consideration of the USLRC application to discontinue service between the U.S. and Liberia via stations (Call Signs WQA27, WQB20, WQB23, WQB25, WQB29, WQB35, and WQB39), we find that neither the present nor future public convenience and necessity will be adversely affected by the discontinuance of service by USLRC. Since its inception, USLRC has provided a communications link between the Akron, Ohio headquarters of the Firestone Tire & Rubber Company and rubber plantations in Liberia. Thus, the discontinuance of service by USLRC will not cause any impairment of service to any segment of the public at large.

3. Accordingly, IT IS ORDERED that application File No. ITD-94-001 IS GRANTED and USLRC is authorized to discontinue the provision of international fixed public radio service between the U.S. and Liberia via the aforementioned radio stations.

4. IT IS FURTHER ORDERED that application File No. C4-88-007-TC is DISMISSED.

5. IT IS FURTHER ORDERED that the Commission's authorization in application File No. C4-88-088-TC, which authorized the transfer of control of USLRC to a voting trust with Robert E. Lee as trustee, is CANCELLED and SUPERSEDED.[2]

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

[1] Letter dated October 13, 1993 from Katherine M. Holden, attorney for USLRC, to William F. Caton, Acting Secretary FCC.

[2] On April 22, 1988, the Commission authorized the *pro forma* transfer of control of USLRC to a voting trust, with Robert E. Lee acting as trustee. The transfer of control of USLRC to a voting trust was an initial step in the proposed transfer of USLRC to Bridgestone/Firestone, Inc., which raised alien ownership questions under Section 310 of the Communications Act.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Seven Seas Communications, Inc. — File No. I-T-C-94-113

Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to provide Inmarsat Standard B and Standard M Mobile-Satellite Services in the Atlantic, Pacific and Indian Ocean Regions

MEMORANDUM, OPINION, ORDER AND AUTHORIZATION

Adopted: April 1, 1994; Released: April 8, 1994

By the Chief, International Facilities Division:

1. On January 12, 1994, Seven Seas Communications, Inc. ("Seven Seas") filed an application pursuant to Section 214 of the Communications Act of 1934, as amended, for authority to provide Inmarsat Standard B and Standard M mobile-satellite services in the Atlantic Ocean Region ("AOR"), Pacific Ocean Region ("POR") and Indian Ocean Region ("IOR"). The application was placed on public notice on January 26, 1994, and no oppositions were received.

2. Seven Seas requests authority to provide service in the ship to shore direction only in the AOR-East and AOR-West via the Laurentides, Quebec, Canada foreign land earth station ("LES") and in the POR via LES facilities at Hong Kong.[1] Seven Seas states that it may construct or lease its own U.S. based Inmarsat Standard B and Standard M facilities for this traffic as soon as there is adequate economical justification for construction. Seven Seas requests authority to provide service in the ship to shore and shore to ship directions in the IOR via the Hong Kong foreign LES. It states that it cannot provide IOR service from U.S. based facilities because the footprint of Inmarsat's IOR satellite does not cover the United States.

3. Seven Seas seeks to offer Inmarsat Standard B and Standard M for maritime mobile satellite service ("MMSS") and international land mobile satellite service ("LMSS").[2] Seven Seas states that all services will be provided via Inmarsat first and second generation satellites. Seven Seas states that accounting will be performed in accordance with generally accepted accounting principles. Charges and regulations governing the service will be specified in one or more tariffs which Seven Seas will file with the Commission to the extent required by law.

4. According to Seven Seas, grant of this application will serve the public interest, convenience and necessity. Authorization of Seven Seas to provide Inmarsat Standard B and Standard M service in the AOR, POR, and IOR will enable Seven Seas to offer these services globally, which is vital for Seven Seas as a U.S. carrier to compete effectively with foreign signatories offering global coverage. Seven Seas also states that authorization is essential in order for Seven Seas to serve its current Inmarsat A customers as they upgrade to newer technologies.[3]

5. Based on the foregoing, we conclude that it will be in the public interest to grant Seven Seas authority for the provision of ship to shore Inmarsat Standard B and Standard M MMSS and international LMSS in the AOR, POR and IOR, and shore to ship Inmarsat Standard B and Standard M MMSS and international LMSS in the IOR subject to the conditions set forth herein.

6. Accordingly, IT IS ORDERED, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, that the application of Seven Seas Communications, Inc., File No. I-T-C-94-113, IS GRANTED and Seven Seas is authorized to:

A. provide Inmarsat Standard B and Standard M mobile-satellite service in the ship to shore direction only in the AOR-East and AOR-West via the Laurentides, Quebec, Canada foreign LES and in the POR via LES facilities at Hong Kong;

B. provide Inmarsat Standard B and Standard M mobile-satellite service in the ship to shore and shore to ship directions in the IOR via the Hong Kong foreign LES; and

C. offer Inmarsat Standard B and Standard M mobile-satellite service for the following applications: maritime mobile-satellite service, international land mobile-satellite service, and international land based temporary-fixed satellite services. Seven Seas's provision of international land mobile-satellite service and land based temporary-fixed satellite services will be limited to (i) communications within and between foreign countries, excluding North America,[4] and (ii) communications via the Laurentides, Quebec, Canada LES and via the Hong Kong LES between fixed points in North America and mobile-satellite terminals located outside North America. Seven Seas may not provide international LMSS to or from mo-

[1] Seven Seas' proposed services in the AOR and POR are limited to ship to shore communications because the International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. §§ 751 *et seq.*, may bar the use of foreign LESs to carry U.S. originated shore to ship traffic without Comsat's provision of the Inmarsat space segment.

[2] Seven Seas' international LMSS services include (1) communications within and between foreign countries, excluding North America, and (2) communications between North America and mobile-satellite terminals located outside North America. Seven Seas does not seek authorization to provide LMSS to or from mobile-satellite terminals located in North America, defined as the United States, Canada and Mexico. Seven Seas seeks to offer service both to mobile-satellite terminals and to temporary-fixed satellite terminals.

[3] Seven Seas currently has authority to resell MMSS via the Inmarsat system in the AOR, POR and IOR via IDB Mobile Communications, Inc. facilities at Niles Canyon, California, Staten Island, New York, and Gnangara, Australia. *See Seven Seas Communications, Inc.*, 7 FCC Rcd 2310 (1992).

[4] Service also shall be excluded to countries for which the United States has an embargo on telecommunications.

bile-satellite terminals located in North America, defined as the land area of the United States, Canada and Mexico. The United States includes Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

7. IT IS FURTHER ORDERED that Seven Seas shall not provide any Inmarsat Standard B or Standard M service from the United States to points in the AOR or POR under this authorization.

8. IT IS FURTHER ORDERED that Seven Seas is authorized to provide international LMSS and land based temporary-fixed satellite services only within the frequency bands specified below which are consistent with the U.S. allocation for maritime services. Thus, Seven Seas shall serve only those land mobile satellite and land based temporary fixed-satellite terminals communicating in the transmit frequency band 1626.5-1645.5 MHz and the receive frequency band 1530-1544 MHz for the mobile-to-satellite and satellite-to-mobile links of its international land mobile-satellite services. In addition, users of this service shall obtain the appropriate license or other authorization from the local telecommunications authority of the country in which the terminal will be used and any necessary licenses or authorizations from Agencies or Departments of the United States government (such as Treasury or Commerce). Thus, this authorization shall not be construed as providing domestic uplink or downlink authority within countries outside of the United States.

9. IT IS FURTHER ORDERED that this authority does not cover the provision of international land mobile-satellite services or land based temporary-fixed satellite services via any new land earth stations or Inmarsat satellites or cover any land mobile-satellite services not specifically authorized herein.

10. IT IS FURTHER ORDERED that this authorization is conditioned upon completion of the consultation(s) required by Article XIV(d) of the Intelsat Agreement to ensure technical compatibility and to avoid significant economic harm. In addition, Seven Seas shall maintain as its first priority the service of maritime commercial, safety and distress needs, and in particular uphold the safety and distress requirements of the Global Maritime Distress and Safety System.

11. Seven Seas shall terminate the use of LES facilities outside the United States to provide Inmarsat Standard B and Standard M service in the AOR and POR as soon as there is adequate economic justification for the cost of constructing or leasing Inmarsat LESs in the United States.

12. The Commission retains jurisdiction over this matter to ensure the nondiscriminatory use of, and equitable access to, the Inmarsat satellite system.

13. IT IS FURTHER ORDERED, pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, that Seven Seas shall file and have in effect a tariff for the services authorized in this order before offering services to the public.

14. IT IS FURTHER ORDERED that Seven Seas shall file copies of any operating agreements entered into by itself or its parent/affiliates with its correspondents within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

15. IT IS FURTHER ORDERED that Seven Seas shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

16. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
January 31, 1994

Released: February 1, 1994

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Mel Karmazin, President
Infinity Broadcasting Corporation

Licensee of Radio Station WJFK(AM)
Baltimore, Maryland

Controlling parent of:

Sagittarius Broadcasting Corporation
Licensee of Radio Station WXRK(FM)
New York, New York

Infinity Broadcasting Corporation of Pennsylvania
Licensee of Radio Station WYSP(FM)
Philadelphia, Pennsylvania

Infinity Broadcasting Corporation of Washington, D.C.
Licensee of Radio Station WJFK(FM)
Manassas, Virginia

600 Madison Avenue, Fourth Floor
New York, New York 10022

Dear Mr. Karmazin:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to the four above-named licensees (collectively referred to as "Infinity") in the aggregate amount of Four Hundred Thousand Dollars ($400,000), pursuant to Section 503(b) of the Communications Act of 1934, as amended.

The Commission today issued a Notice of Apparent Liability (NAL) to Americom Las Vegas Ltd. Partnership, licensee of Radio Station KFBI(FM), Pahrump, Nevada, for violation of 18 U.S.C. Section 1464 by its broadcast on September 30, October 6 and October 12, 1993 of certain apparently indecent material contained in the "Howard Stern Show".[1] Based on our experience and your acknowledgements in prior similar circumstances, we presume that the material aired by KFBI(FM) was also aired by the four above-captioned stations on the same dates as noted above and at a time of day between 6:00 a.m. and 10 a.m.[2] The Commission has also received information indicating that Station WXRK(FM), New York, New York, may have further violated 18 U.S.C. Section 1464 by its broadcast of certain apparently indecent material during the "Howard Stern Show" on August 4, 1993.[3] Transcripts of the allegedly indecent broadcasts, taken from transcripts and tapes submitted by the complainants, are attached.

Pursuant to 47 U.S.C. Sections 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. Section 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as language or material that, in context, depicts or describes "in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705, 2705 (1987) (citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)). The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times of day when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

The excerpts from the "Howard Stern Show" reflected in the attached transcripts appear to be indecent in that they contain language that describes sexual and excretory activities and organs in patently offensive terms. Moreover, because the material aired at times when there was a reasonable risk that children may have been in the audience (between approximately 6:00 a.m. and 10:00 a.m.), it is legally actionable. Thus, it appears that on August 4, September 30, October 6 and October 12, 1993, Infinity violated 18 U.S.C. Section 1464 by airing indecent programming on each of the four above-referenced stations.

We have determined that the appropriate remedy for the apparent violations noted here is a monetary forfeiture.[4] Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Sagittarius Broadcasting

[1] *Americom Las Vegas, Ltd. Partnership*, FCC 94-25 (adopted January 31, 1994).

[2] *See, e.g., Infinity Broadcasting Corporation*, 8 FCC Rcd 6740 (1993) (in responding to a letter of inquiry from the Commission as to whether Infinity's stations had aired the same Howard Stern Show material that had been aired by KFBI(FM), Infinity stated "it can be assumed that the substance of these shows was also broadcast by WXRK(FM), WYSP(FM) and WJFK(AM and FM) on those dates ... [and] would have been aired by the aforementioned Infinity stations from approximately 6:00 a.m. to approximately 10:00 a.m." *Id.*).

[3] Because our experience in prior enforcement proceedings involving Infinity indicates that material aired during the "Howard Stern Show" as broadcast by WXRK(FM) is also aired by the other above-captioned Infinity stations, we presume for purposes of our action here that WYSP(FM), Philadelphia, Pennsylvania; WJFK(FM), Manassas, Virginia; and WJFK(AM), Baltimore, Maryland, also carried the August 4, 1993 broadcast between approximately 6:00 a.m. and 10:00 a.m.

[4] *See By Direction Letter to Steven A. Lerman* (Assignment of License of KRTH(FM), Los Angeles, CA), FCC 94-24 (adopted January 31, 1994).

Corporation, Infinity Broadcasting Corporation of Pennsylvania, Infinity Broadcasting Corporation of Washington, D.C., and Infinity Broadcasting Corporation, licensees of stations WXRK(FM), New York, NY; WYSP(FM), Philadelphia, PA; WJFK(FM), Manassas, VA; and WJFK(AM), Baltimore, MD, respectively, are hereby each notified of their separate apparent liability for a forfeiture of One Hundred Thousand Dollars ($100,000) for their apparent willful and repeated violations of 18 U.S.C. Section 1464 on the dates set forth above.

In determining the amount of these forfeitures, we find that the same exacerbating considerations concerning Infinity's history of apparent misconduct reviewed in assessing prior forfeitures against Infinity are applicable here. *See Infinity Broadcasting Corporation,* 8 FCC Rcd 2688, 2689-90 and n.3. (1992); *Infinity Broadcasting Corporation,* 8 FCC Rcd 6740, 6741 (1993). As in the earlier actions, we have continued to take account here of the various relevant factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended, and reflected in our *Policy Statement on Standards for Assessing Forfeitures,* 8 FCC Rcd 6215 (1993), *appeal pending sub nom. USTA v. FCC,* Case No. 92-1321 (D.C. Cir. July 30, 1992).

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

This letter was adopted by the Commission on January 31, 1994.

BY DIRECTION OF THE COMMISSION

William F. Caton
Acting Secretary

Attachments

*Chairman Hundt not participating; Commissioners Quello and Barrett concurring in the result.

Radio Stations:	WXRK-FM, New York, NY; WYSP-FM, Philadelphia, PA; WJFK-FM, Manassas, VA; WJFK-AM, Baltimore, MD
Time Broadcast:	Between approximately 6:00 and 11:00 a.m.
Material Broadcast:	Howard Stern Show

HS: Howard Stern
RQ: Robin Quivers
MV: Male Voice
AS: Allison Stern

August 4, 1993

* *

HS: Come on baby, you know you want to hear some dirty talk.

RQ: Well I think it's very impressive that you went home and had sex in the middle of the week.

HS: Oh yes, oh yes. It's the new Howard Stern. I was so happy yesterday.

RQ: And, and I would say.

HS: That's my wife. I got to call my wife.

RQ: It's your fault that you're not having sex then.

HS: That's right.

RQ: She was perfectly willing.

HS: And she couldn't believe, she was completely lubricated.

RQ: (Laughs)

HS: Hey, she went for the K-Y jelly, I said you don't need that baby. You don't even need it. Come back here. She got her period.

RQ: What?

HS: She got her period.

RQ: And you did anyway?

HS: No, no, no she had her period a couple of days ago so I knew she was ready.

RQ: Oh.

HS: Without K-Y.

RQ: Oh, I see what you're saying.

HS: And she was, she was shocked, she goes, boy you know your women, I was ready. I was ready without K-Y. Ask my wife how good a mood I was over this Imus thing yesterday? Hey honey, hey, I mean, Gary get my honey on the phone.

RQ: Maybe you should thank him.

HS: Yeah, she was sloppy and ready. Mm. Then I had her down in the gym with my personal trainer Jonathon, working her out so she'll get back to the shape she was in.

RQ: You mean you worked her out.

HS: Yeah, get back to the shape that she was in. She was all nervous.

She was afraid Jonathon would smell the love on her. But I cleaned her up with, sprayed her down. She goes, the trainer is going to smell me. So I go, so let him smell you. That's the smell of love. Every guy loves that.

RQ: That's a good smell.

HS: That's a good smell. There's enough bad smelling things in this world, that's a good smell.

MV: Perfume.

HS: Get my wife on the phone. Gary, you retard. Why don't I see him dialing? Frigging idiot. Even he can't ruin my day.

MV: Ba Ba Booie.

HS: Oh big giant teeth won't enter into my psyche. I wrote a song about that idiot.

RQ: Did you?

HS: Not Gary, I mean Imus.

* *

HS: Hi Allison.

AS: What's up?

HS: Hey, tell everyone what I did to you yesterday afternoon.

AS: Ah. (Laughs)

HS: Go ahead, and weren't you lubricated?

RQ: She sounds like a little kid.

HS: She's still on a high. She says she's going to be ready for me this afternoon.

AS: That's right.

HS: Yeah.

AS: It was wonderful.

HS: It was terrible too because I couldn't sleep last night, my wife now had to sleep with me last night because she's all in love.

RQ: She's in love, yeah.

HS: So she had to sleep next to me, so she comes in at midnight, bangs open the door, I'm wide awake, I got no sleep last night.

RQ: Oh no.

HS: I'm up and she's snoring away in the bed, I went downstairs to masturbate.

AS: Oh get out.

HS: I did and you know, this is after making love to my wife.

RQ: Oh you're a hero.

HS: I was wild yesterday. My little love juice catcher.

AS: I thought you said you were going to start masturbating?

HS: I'm going to stop it.

AS: Oh, stop it.

HS: I didn't say start it. Where you been? But tell everyone, why was I in such a good mood yesterday? Did you figure it out?

AS: No.

HS: The Imus thing with his lung.

AS: Oh.

HS: Yeah, that was it. You know I love good news.

AS: (Laughs) You're terrible, you're terrible.

HS: And you were really hot for me too. I didn't need any foreplay. She was like screaming the whole time, I want foreplay, I want foreplay. I said you don't even need it, you're ready. I tested you, you're ready.

AS: Well, it would have been nice, a little foreplay.

HS: You didn't need it.

RQ: How long was the whole thing.

HS: About two minutes.

AS: (Laughs)

HS: Not even, but honey, did you have an orgasm?"

AS: Not really.

HS: No?

AS: But it felt good.

HS: I had one.

AS: No, it was fun.

HS: It was good but then, I was afraid you'd charged up because I really didn't finish her off and I'm not, if I was with a new girl.

AS: Oh would you stop it.

HS: I would probably get into a whole bunch of stuff afterwards just to please her, but it's my wife, you cares? I had an orgasm.

RQ: You got up and went and exercised.

HS: I went up, I went downstairs to exercise and my wife had an exercise appointment with her trainer cause I want her as thin as she was when she was 19.

RQ: Thin as a pin.

HS: I really want you back in that kind of shape now. Now's the time.

AS: I'm working on it.

* *

HS: And then she goes, the trainer is going to smell love all over me.

AS: I didn't.

HS: So I go, he's not going to smell, and if he smells it he's going to like it. Did he smell anything on you?

AS: You're disgusting.

HS: He didn't smell the love on you.

RQ: He wasn't going to say anything was he. Oh baby, what have you been up to?

HS: Hey, you must be horny. Do you think you smelled like love?

AS: No, I didn't.

HS: No, I cleaned you up pretty good, right?

AS: Oh God.

HS: Alright, I can still get you off can't I?

AS: Oh God.

HS: And she.

AS: And that was very nice.

HS: Tell everyone, tell Robin when you were grabbing my ass what did you say?

RQ: Oh, you really got her excited.

AS: (Laughs)

HS: She's going man, she goes, your ass is like, it's as hard as rock.

RQ: Oh.

HS: Right honey?

AS: You're embarrassing me.

HS: Hey, why not brag a little, huh, you're man is in shape.

AS: You look good honey.

HS: Damn right.

RQ: See, now you know why you do it.

HS: And you better get in shape too.

* *

HS: You liked your sex didn't you? Well, if you want more of that better go out shopping for daddy.

AS: Oh, you're disgusting.

HS: You loved it. You were so hot, you couldn't even handle it. You know my hand burned?

AS: Oh, stop it.

HS: I scorched my fingers. I was in the hospital. You were hot.

AS: No, you know.

HS: You got so hot and horny.

AS: Well, it was nice, it was nice to have human contact.

HS: You needed it, boy you needed it bad and I was the guy to deliver the torpedo.

AS: It was very nice, it was very nice.

HS: I'm going to go home and drag you around the floor today with, by your hair. Treat you like a dish rag.

AS: I don't like that.

HS: Treat you like a whore.

AS: No, I don't like that.

HS: Tonight you're my whore, I treat you like a whore. See how horny she got?

RQ: You know it's always interesting with love talk and you chewing at the same time.

AS: I know.

HS: Hey, why not do two things at the same time? I'm ambidextrous. You were on fire. You were on fire and you know where I'm talking about.

AS: I know but what are you eating?

HS: Something that tastes like you.

AS: Oh.

HS: Fish. I'm eating some tuna fish.

AS: Alright, goodbye, I'm hanging up.

HS: (Fish pronounced like "Fee-shh") My little tuna. You know what I do when you're not in bed next to me? I put a can of tuna next to me.

RQ: Oh Howard.

HS: That's a cute one. Alright, you did good.

AS: Oh God.

HS: Plus I didn't have to do any foreplay for two hours with that stupid vibrator, boy, I went right in for the kill. That's the kind of love I like.

AS: It would have been nice with a little foreplay.

HS: Hey, who had time?

AS: Listen, it was very nice.

HS: Alright, you might get more, you might get more. Alright, thank you.

AS: Goodbye.

HS: Keep everything, keep everything moist and nude.

RQ: Be ready.

HS: Be ready. Meanwhile she went and got a bikini wax.

RQ: Uh huh.

HS: I don't know who's doing that to you Allison but it looks like, like torture is being committed on your body. She's got big, giant red welts.

RQ: You don't understand that's really irritating.

HS: Then don't do it. Shave like a normal girl. It looked horrible. I got to tell you it was a bit of a turn-off.

AS: No, no, the reason why I got this wax that I did, that I had shaved last week and.

HS: But Allison every time you come back from a wax, here's the story, my wife really has more hair than most.

AS: You exaggerate.

HS: Her hairs go almost up to the belly button.

AS: Everyone I know, oh.

HS: She's got a lot of hairs. And she's got hairs all over.

RQ: That just shows how womanly she is.

HS: She's very feminine. Hey, it's very feminine.

AS: Oh God.

HS: If I was her I'd squat on a mirror.

AS: Hold the wax.

HS: Anyway, so I said.

RQ: Why a mirror.

HS: I say to her, look, be like Penthouse magazine, slim yourself down, I'm going to get you implants I really want.

RQ: Implants?

HS: Yeah, I want my wife to care about her appearance. I want you, you know what I want you to weigh? 110. That's the right weight for you.

AS: I think I was ten.

HS: Yeah but Allison, I'm down to a weight that I was in high school. Why can't you have the same pride I have?

AS: Well maybe.

RQ: Don't you want her to be healthy?

HS: No.

RQ: Oh.

HS: I want her to make sure she holds onto her man.

AS: I don't even listen to this.

HS: She's almost 40, I could get the seven year itch.

RQ: (Laughs)

HS: So I say to her.

AS: Got plenty of itch.

HS: I say look at Penthouse and do what they do in Penthouse right? Groom yourself cause sometimes in the winter she really lets herself go and it's like a grotto down there.

AS: You know something, you called me up for such a nice conversation.

HS: Wait a second. So listen to this, so yesterday I come home. I rip her panties off and I see this grooming going(?) but it's like after the gardener just mowed the lawn and there's tracks all over. I mean it was blood, like bloody places where they ripped the hairs out. Welts. Oh yes, come on, let's be honest here. So I say, what are you doing now? She says, get waxed. I said, first of all they don't take enough hair off when they wax you. She goes, well I have to wear my panties and I have to pull my panties to, the whole damn, take your damn panties off when you're in there.

RQ: They don't want your panties off.

HS: So it's another girl, take your panties off.

AS: They don't want that.

HS: Let them wax the whole thing.

AS: You don't.

HS: Pull 'em up.

AS: You don't understand.

RQ: Just pull them up.

AS: You don't understand.

HS: Pull them up.

AS: I really don't want to go into this right now but.

HS: Why you got something better to do?

AS: (Laughs)

HS: It's your husband's radio show, help.

RQ: Help him out.

AS: As a matter of fact.

HS: Help me out. Got an opportunity to contribute.

* *

HS: First of all, let me say something. I talked to Amy Lynn about this, who is a Penthouse pet who is the most beautiful girl in the world.

RQ: Doesn't she shave?

HS: She shaves.

AS: Oh, how could she shave, that's terrible.

HS: She does it. She looks great. I saw her naked. I was at the book shoot with her naked. She's fantastic.

AS: Well, the shaving, what does the shaving do? It just cuts the surface hair.

HS: Yes, so do it every day in the shower.

RQ: (Unintelligible) Pulls it out.

HS: And then, the best part. Then my wife gets waxed and she's all irritated, right? Then she has to wait for it to grow back so she can wax again.

RQ: Right, it has to get a little stubble.

HS: So do you understand what happens?

AS: Well, what do you do Robin?

RQ: I shave.

HS: She shaves. Every girl shaves, You know, you got to, I'm going to get you, I'm going to hook you up with Amy Lynn and she's going to teach you how to be a Penthouse pet. I'm going to get Penthouse pet lessons. She's going to teach you everything.

AS: I'm, I'm really interested in that.

HS: I want my wife training to be a Penthouse pet.

AS: Oh my God.

HS: How come you don't know girl stuff?

AS: I do know girl stuff.

HS: She doesn't know girl stuff, she doesn't even know what shoes to wear in bed. I'm telling you, I'm getting you Amy Lynn, I'm hiring her as your tutor. To shave, a shaving tutor.

AS: I'm not interested.

HS: A breast implant tutor and you hang around with those girls you get hooked up into it.

AS: You know.

HS: I want you so shaved and groomed.

AS: I really don't want this conversation with you, I'm really annoyed at you.

HS: Now you're, I called up, I love you.

AS: Well, I don't like it.

HS: This is absurd, this is a love conversation.

AS: No, it's not a love conversation.

HS: I'm interested, after 19 years I'm still interested.

AS: Then.

HS: You see what I did to you yesterday?

AS: You should leave me alone today.

HS: That had to be a little painful the way I, just took you.

AS: (Laughs) Not really.

HS: There's a reason why I want you looking good down there. I'm going to spend more time with you.

AS: Oh God, I was looking fine. I'm in a.

HS: It doesn't look that good. I'm being honest with you Robin.

RQ: Will you stop?

HS: It didn't look good down there. And let me tell you something, a girl has got to do a lot of stuff to herself.

AS: Howard, I know what I'm doing.

HS: Cause that area looks bad.

RQ: Oh.

HS: So I'm saying, every girl Robin, that's you included.

RQ: Thank you.

HS: I've never seen a girl pretty down there. It's pretty ugly those women's private parts.

AS: You know, you know.

RQ: You know what, maybe they shouldn't be shared with you. (Unintelligible)

HS: Hey I'm going to evaluate on a scale of one to ten, her area was a two. Her pubic area. It was a two.

RQ: And do you know she did all that for you yesterday.

HS: Yeah.

RQ: She even asked for foreplay.

HS: Wrong, timeout, she didn't do it for me, she did it for her yenta friends, she had them over for a bathing suit party. You know it's a funny thing about women's private parts, when they look perfect they're only a five. This is what I told my wife the other night.

AS: You know you're.

HS: And I said to her, if you're a two when you could be a five at best, imagine what that looks like. And all she has to do is groom. She's very pretty down there.

AS: Well Howard, I'm glad you had a nice time yesterday.

HS: Hardly touched.

* *

HS: You want to know what I did the other day? I'm going to admit it. I took my razor and I groomed my buttocks hairs.

RQ: Buttock hairs.

HS: Inside, I took an electric razor and I weed whacked in there and I'm going to tell you something, I'm a lot tidier back there now. I don't smell. And guess who told me how to do it – Ralph. (Razor sound)

RQ: I'm surprised he didn't do it for you.

HS: He said he draws the line at that. I said, how do you do it? Do you, I actually took an electric razor.

RQ: An electric you go with.

HS: I have hairs back there as all guys do.

AS: Better be careful Howard with your.

HS: Nothing bad happened and I went back there, I said, how do you do it? Do you stand over a mirror, he goes, no you stand up and do it.

RQ: You lift one leg or something?

HS: That's what I did. I lifted one leg and I whacked away. You should have seen how much hair came out.

AS: Yeah, all over my bathroom.

HS: Did you see it? That was buttocks hair.

RQ: You didn't clean it up?

HS: I was busy. I smelled of it. But I tell you guys, it's like trimming nose hair only a little bit trickier.

* *

HS: I couldn't believe how much hair came out.

RQ: Bales of hair.

HS: Bales of hair and dingleberries and everything just came rolling right out.

AS: Next time clean up.

HS: I was hanging like a file folder. You should have seen me Robin. It was a funny scene but I'm going to tell you something now, when I go to the men's room, I do my nastiest of business there's no problem.

RQ: Well, now how often are you going to have to do that?

HS: And then when I started walking around it felt very smooth back there. It was different.

RQ: When you put on your underwear they fit.

HS: It was great, no obstacles. Guys should try it, I'm telling you, it's great. I'm telling you when you have to clean up after yourself, no problem, I take a shower now, I don't take a shower after I go to the bathroom anymore. I really don't. That's how tidy I am.

RQ: You can actually just wipe and take care of.

HS: Yeah, just like a girl.

AS: Oh God.

HS: Do you have to shower after you?

RQ: No.

HS: See, I used to have to, that's how caught and tangled everything got. Now I don't.

RQ: Well, I'm glad.

HS: I'm telling you it's fantastic.

RQ: I didn't know you had hair as long as that.

HS: Yeah, oh.

AS: I didn't either.

HS: Like a billy goat.

* *

September 30, 1993

HS: She stands there. She doesn't wear any good clothes though. She ought to dress like she did in those white snake videos. Little white outfit with the legs, rolling around on a Jaguar, all sexed up. That Jaguar must have stunk for three days. I'm watching.

RQ: I don't think she's a smelly person.

HS: But you know girls have a special scent, they leave, when they're all hot and they're not wearing panties and they're laying all over a car. Panty juice. Panty juice. I always look at my wife's panties. There's always something going on there too.

RQ: Oh.

HS: She always.

RQ: (Unintelligible)

HS: What do you mean, boy oh boy.

RQ: Panties.

HS: These women have all kinds of stuff going on.

RQ: Like yours are crystal clean.

HS: I never liked, there's always like junk going on in my wife's panties.

RQ: Let me see yours right now.

HS: Fine. What are you saying?

RQ: I want to see yours right now.

HS: I'll tell you, I don't have the stuff, you know, I have some leakage I'll admit.

RQ: (Laughs)

HS: I think she's leaking from everywhere.

RQ: (Laughs)

HS: No sometimes I look at my wife's underpants and I go, yes, I shouldn't really look at her underpants cause it's kind of a turn off. You know what I mean? There's lots going on.

RQ: I don't know why you're doing that.

HS: She always has pads and stuff. I don't know what's going on. It's always a two-sided surprise. You got, like stuff going on in your underpants right?

RQ: Everybody does.

HS: Really? God, it's disgusting.

* *

October 6, 1993

HS: Tom, how about you, do you use a vibrator? On your wife? You don't?

MV: No, on his son. (Unintelligible).

HS: Oh, Tom you're not a pedophile are you? Does Jackie know something about this? You're not a pedophile, I know that.

* *

October 12, 1993

HS: This is the one about incest? Daughter?

RQ: Let me hear that.

HS: I want to have sex with my daughter.

RQ: That's romantic.

HS: It's romantic too. It's a ballad to my daughter. (Laughter) You're so cute in your jammies. I don't know what I'm saying, I know Jerry Lee Lewis is with his cousin but.

RQ: Daughters too close.

MV: (Unintelligible) Breakfast table in an otherwise empty room, beyond her.

HS: This is going to be a big hit this one.

MV: My only.

HS: This guy goose bumps.

MV: That are ever. (Unintelligible)

HS: My thick fingers will make you happier than Barney. I know, yeah.

MV: (Unintelligible)

HS: Yeah, they're good.

RQ: Yeah, where's my copy?

MV: I'll bring it tomorrow.

HS: I'll take this one home, before Robin grabs it from me, she's wrestling me. This one's about getting it on with your father. Guys.

RQ: Daughters.

HS: No this is guys who get it on with their dads.

RQ: I see.

HS: I love you dad, you're my dessert, every night. This is good.

MV: (Unintelligible) That's okay man cause I love.

RQ: (Unintelligible) Played this one before.

HS: Why don't those dudes come on my show? Let's come down here and be naked.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Released: February 1, 1994

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Americom Las Vegas Ltd. Partnership
Licensee, KFBI(FM), Pahrump, NV
6255 Sunset Boulevard, Suite 1901
Los Angeles, CA 90028

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of Thirty Seven Thousand Five Hundred Dollars ($37,500) pursuant to Section 503(b) of the Communications Act of 1934, as amended.

The Commission has received information indicating that Radio Station KFBI(FM), Pahrump, NV, may have violated 18 U.S.C. § 1464 by broadcasting allegedly indecent material during "The Howard Stern Show" on September 30, October 6 and October 12, 1993, between approximately 6 a.m. and 11 a.m. Transcripts of the allegedly indecent broadcasts, taken from transcripts and tapes submitted by the complainant, are attached.

Pursuant to 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. *See Infinity Broadcasting Corporation of Pennsylvania,* 2 FCC Rcd 2705 (1987). The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC,* 852 F.2d 1332 (D.C. Cir. 1988).

We believe that the subject excerpts from "The Howard Stern Show" are indecent in that they contain language that describes sexual and excretory activities and organs in patently offensive terms. Because the material aired at times when there was a reasonable risk that children may have been in the audience, it is legally actionable. Thus, it appears that on the dates listed above, Station KFBI(FM) violated 18 U.S.C. § 1464 by airing indecent programming. Accordingly, pursuant to Section 503(b) of the Communications Act, Americom Las Vegas Ltd. Partnership is hereby advised of its apparent liability for a forfeiture of Thirty Seven Thousand Five Hundred Dollars ($37,500) for its apparent willful and repeated violations of 18 U.S.C. § 1464 on the dates cited above. The amount specified was determined by using the criteria set forth in the *Policy Statement, Standards for Assessing Forfeitures,* 8 FCC Rcd 6215 (1993), *appeal pending sub nom., USTA v. FCC,* Case No. 92-1321 (D.C. Cir. filed July 30, 1992), and the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended. The base amount for an indecency violation is $12,500.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

This letter was adopted by the Commission on January 31, 1994.

BY DIRECTION OF THE COMMISSION

William F. Caton
Acting Secretary

Attachments

*Chairman Hundt not participating; Commissioners Quello and Barrett concurring in the result.

Radio Station:	KFBI-FM, Pahrump, NV
Time Broadcast:	Between approximately 6:00 and 11:00 a.m.
Material Broadcast:	Howard Stern Show

HS: Howard Stern

RQ: Robin Quivers

MV: Male Voice

AS: Allison Stern

September 30, 1993

* *

HS: She stands there. She doesn't wear any good clothes though. She ought to dress like she did in those white snake videos. Little white outfit with the legs, rolling around on a Jaguar. all sexed up. That Jaguar must have stunk for three days. I'm watching.

RQ: I don't think she's a smelly person.

HS: But you know girls have a special scent, they leave, when they're all hot and they're not wearing panties and they're laying all over a car. Panty juice. Panty juice. I always look at my wife's panties. There's always something going on there too.

RQ: Oh.

HS: She always.

RQ: (Unintelligible)

HS: What do you mean, boy oh boy.

RQ: Panties.

HS: These women have all kinds of stuff going on.

RQ: Like yours are crystal clean.

HS: I never liked, there's always like junk going on in my wife's panties.

RQ: Let me see your's right now.

HS: Fine. What are you saying?

RQ: I want to see yours right now.

HS: I'll tell you, I don't have the stuff, you know, I have some leakage I'll admit.

RQ: (Laughs)

HS: I think she's leaking from everywhere.

RQ: (Laughs)

HS: No sometimes I look at my wife's underpants and I go, yes, I shouldn't really look at her underpants cause it's kind of a turn off. You know what I mean? There's lots going on.

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RQ: Everybody does.

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* *

October 6, 1993

* *

HS: Tom, how about you, do you use a vibrator? On your wife? You don't?

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October 12, 1993

HS: This is the one about incest? Daughter?

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MV: (Unintelligible) Breakfast table in an otherwise empty room, beyond her.

HS: This is going to be a big hit this one.

MV: My only.

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HS: Yeah, they're good.

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MV: (Unintelligible) That's okay man cause I love.

RQ: (Unintelligible) Played this one before.

HS: Why don't those dudes come on my show? Let's come down here and be naked.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Isaias M. Garcia NAL/Acct. No. 215LA0007
11726 Ferris Road
El Monte, California 91732

ORDER

Adopted: April 4, 1994; Released: April 11, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Isaias M. Garcia filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $2,000 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act). For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $250.

II. BACKGROUND

2. On May 14, 1992, the Engineer in Charge of the Los Angeles office issued a Notice of Apparent Liability (NAL) to Mr. Garcia. The penalty was imposed for $2000. Based on the response from Mr. Garcia, the Engineer in Charge issued a Notice of Forfeiture (NOF) for $2,000 on July 21, 1992. Mr. Garcia now appeals. The petitioner contends an inability to pay the monetary forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the August 20, 1992 Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition as well as review of the NAL and NOF, reveals that Mr. Garcia's financial situation was not properly considered. Thus, the forfeiture amount will be reduced accordingly.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED in part and DENIED in all other respects.

5. IT IS FURTHER ORDERED that Isaias M. Garcia must pay the forfeiture amount of two hundred fifty dollars ($250) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215LA0007 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Isaias M. Garcia.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ahead Systems, Inc. NAL/Acct. No. 215LA0018
Fremont, California

ORDER

Adopted: April 4, 1994; Released: April 11, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Ahead Systems, Inc., filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $5,600 issued for violation of Section 302(b) of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. § 302(b) and Section 2.803 of the Commission's Rules, 47 C.F.R. § 2.803. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On July 27, 1992, the Commission's Los Angeles Office issued a Notice of Apparent Liability (NAL) to Ahead Systems, Inc. The penalty was imposed for violating the Commission's marketing rules by exhibiting a computer peripheral device (the VGA Wizard Deluxe 6.0 VGA card) which lacked FCC authorization. Based on the response from Ahead Systems, Inc., the Los Angeles Office issued a Notice of Forfeiture (NOF) for $5,600 on August 19, 1992. Ahead Systems, Inc., now appeals. The petitioner contends that the forfeiture should be reduced or cancelled because its failure to post a disclaimer was due to an oversight. Petitioner argues that its application for a grant was pending at the time, and has since been granted, and that the Company cannot afford to pay the forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of the arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed. Although the petitioner claims inability to pay the forfeiture, no documentation, such as tax returns or financial statements that were requested in the Notice of Apparent Liability, were submitted to support this claim. Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is DENIED.

5. IT IS FURTHER ORDERED that Ahead Systems, Inc. must pay the forfeiture amount of five thousand six-hundred dollars ($5,600) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215LA0018 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Ahead Systems Inc.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

HiQuality Systems, Inc.
Sunnyvale, California

NAL/ACCT. No. 215SF0020

Liability for Monetary Forfeiture

ORDER

Adopted: April 4, 1994; Released: April 12, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. The Bureau has before it a Petition for Reconsideration filed by HiQuality Systems, Inc. (Petitioner) pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, requesting reconsideration of the Bureau's December 23, 1992, action finding Petitioner liable for a monetary forfeiture in the amount of $7,300 for violating Section 302(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 302(b) (the Act), and Section 2.803 of the Commission's Rules, 47 C.F.R. § 2.803. As explained below, we are reducing the monetary forfeiture penalty.

2. The appropriate amount for this forfeiture is $5,600.

II. BACKGROUND

3. Our records show that on June 3, 1992, an FCC inspector from the Commission's San Francisco Office visited HiQuality Systems' retail store in San Rafael, California. She observed offered for sale an HIQ 386-25 MHz mini-tower computer improperly labelled with the FCC identifier IY8E688, which is the identifier for a different device, an HIQ 486-33MHz tower computer. Also offered for sale was a HIQ 486-33MHz mini-tower computer which had no label. The conspicuous notice specified in Section 2.803 of the Commission's Rules, required to be displayed along with non-approved equipment in a marketing environment, was absent.

4. On July 31, 1992, pursuant to the forfeiture provisions under Section 503(b) of the Act, 47 U.S.C. § 503(b), and the authority delegated under Section 0.314 of the Commission's Rules, the Commission's San Francisco Office issued a $14,000 Notice of Apparent Liability (NAL) to HiQuality Systems, Inc. for violating Section 302(b) of the Act, 47 U.S.C. § 302(b), and Section 2.803 of the Commission's Rules. 47 C.F.R. § 2.803. On August 21, 1992, Petitioner responded to the NAL. After review of the response, the Commission's San Francisco Office issued a Forfeiture Order on December 23, 1992, for $7,300.

III. DISCUSSION

5. Section 302(b) of the Communications Act and Section 2.803 of the Commission's Rules prohibit the marketing of equipment capable of causing radio interference prior to grant of an equipment authorization by the Commission. The devices in question were displayed in a retail store. The conspicuous notice required by the Commission's Rules was not displayed. Although Petitioner claims each unit was marked as being a demonstration unit, the label or notice was not readily visible to customers. Whatever label was used did not contain the required wording as indicated in Section 2.803 of the Rules. Therefore, displaying equipment in a retail store without a conspicuous label as specified in Section 2.803 of the Commission's Rules is considered to be marketing of that equipment.

6. In the petition for reconsideration, Petitioner claims that the usual forfeiture amount for marketing violations is $2,000 per device. That was correct *before* Congress increased the amounts for forfeitures issued under the Act. These amounts were summarized in the Commission's August 1, 1991 *Policy Statement*[1] when the forfeiture letters Petitioner refers to were issued. The instant forfeiture was issued *after* adoption of the 1991 *Policy Statement*. The 1991 *Policy Statement* increased the base forfeiture amounts for most kinds of violations. This Order is being issued in conformance with the recently released revised 1993 statement of forfeiture policy. *See 1993 Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993). The base amount for a marketing violation is $7,000. Since two different models of computers were on display, there were two separate violations.

7. Petitioner also claims that Commission staff failed to consider applicable downward adjustment factors in determining the forfeiture amount. Commission staff did consider adjustment criteria and reduced the initial amount of the penalty by almost 50% in the Notice of Forfeiture. However, we note that Petitioner has no prior history of this type of violation. For this reason, we are making an additional downward adjustment of the forfeiture amount.

IV. CONCLUSION

8. For the reasons cited above, we reduce the finding of liability for monetary forfeiture to $5,600. In determining the amount of forfeiture, the Commission's policy regarding forfeiture adjustments, *see 1993 Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), was taken into consideration. No further adjustments appear warranted.

V. ORDERING CLAUSES

9. Accordingly, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(f) of the Commission's Rules, 47 C.F.R. § 1.80(f), IT IS ORDERED, that HiQuality Systems, Inc. FORFEIT to the United States the sum of five thousand six hundred dollars ($5,600) for the willful violation of Section 302(b) of the Communications Act and Section 2.803 of the Commission's Rules.

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[1] *See Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd. 4695 (1991).*

10. IT IS FURTHER ORDERED that, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(h) of the Commission's Rules, 47 C.F.R. § 1.80(h), HiQuality Systems, Inc. shall make such payment immediately upon receipt of this ORDER.[2] Payment should be made by check or money order payable to the Federal Communications Commission, attention NAL Acct. 215SF0020, and must be mailed to:

Federal Communications Commission

P.O. Box 73482

Chicago, Illinois 60673-7482

11. IT IS FURTHER ORDERED that the Field Operations Bureau send by Certified Mail, Return Receipt Requested, one copy of this Order to HiQuality Systems, Inc., and a copy to its attorney.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Enforcement Division

[2] Petitioner may contact the Commission's Debt Collection Officer in the Billings and Collections Branch, Stop Code 1110A2, 1919 M Street, N.W., Washington, DC 20554, if it is unable to pay the full amount within the period designated above.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Advanced Scientific Corporation
Taiwan, Republic of China

NAL/Acct. No. 215CG0004

ORDER

Adopted: April 5, 1994; **Released: April 12, 1994**

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Advanced Scientific Corporation filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $7,000 issued for violation of Section 302(b) of the Communications Act of 1934, as amended, (the Act), and Section 2.803 of the Commission's Rules. For the reasons noted below, we are cancelling the monetary forfeiture.

II. BACKGROUND

2. On May 20, 1992 , the Commission's Chicago Office issued a Notice of Apparent Liability (NAL) to Advanced Scientific Corporation. The penalty was imposed for exhibiting a "ASCO 286SL Cybermate Personal Computer" at the Spring '92 COMDEX computer trade show in Chicago, Illinois. The model exhibited bore no label to confirm that it had been granted an equipment authorization as required by Section 15.101 of the Commission's Rules nor was a conspicuous notice displayed as required by Section 2.803 of the Commissions Rules that indicated that it was not approved by the Commission and was not and could not be offered for sale. No response was received. Accordingly, the Commission's Chicago Office issued a Notice of Forfeiture (NOF) for $7,000 on June 26, 1992. Advanced Scientific Corporation now appeals. The petitioner contends that the Commission made an error in noting the model number of the computer on display, that it was a "ASCO 386SL Cybermate Personal Computer" instead of a "ASCO 286SL Cybermade Computer."

III. DISCUSSION AND CONCLUSION

3. The arguments raised at Item 1 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as review of the NAL and NOF, we find that, due to the apparently incorrect model number cited in the NAL, the imposed forfeiture is not in accord with the Act and rules, and is hereby cancelled.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED and the monetary forfeiture is CANCELLED.

5. IT IS FURTHER ORDERED that Advanced Scientific Corporation IS HEREBY PUT ON NOTICE that a grant of equipment authorization *is not transferrable*;[1] that all units of equipment sold or offered for sale must have a label affixed showing, among other things, the equipment authorization code (FCC ID);[2] and that marketing (including the displaying or offering for sale) of units that are either unapproved or that lack valid identification labels is prohibited by Section 2.803 of the Commission's Rules.[3] Any future failure to comply with these rules will result in additional forfeiture penalties.[4]

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to Advanced Scientific Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

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[1] *See* 47 C.F.R. § 2.929.
[2] *See* 47 C.F.R. § 2.925.
[3] *See* 47 C.F.R. § 2.803.
[4] *See* 47 U.S.C. § 503(b) and 47 C.F.R. § 1.80(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

County of Kern
Bakersfield, CA

NAL/Acct. No. 115LA0058

ORDER

Adopted: April 5, 1994; **Released: April 12, 1994**

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. County of Kern filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $500 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act), and Section 503(b) of the Commission's Rules. For the reasons noted below, we are cancelling the monetary forfeiture.

II. BACKGROUND

2. On May 13, 1991 , the Los Angeles Field Office issued a Notice of Apparent Liability (NAL) to the County of Kern. The penalty was imposed for operation of a radio station on frequencies on which it was not authorized to operate from the business address of 1773 Hwy. 58, Mojave, CA. Based on the response from the County of Kern, the Los Angeles Field Office issued a Notice of Forfeiture (NOF) for $500 on August 16, 1991. The County of Kern now appeals. The petitioner contends that the FX1 station in question was covered on the original license, but was not printed on the station's current license due to FCC data base entry restrictions. Additionally, pursuant to 90.135(b)(3), the FX1 station was not required to be listed on the license.

III. DISCUSSION AND CONCLUSION

3. The arguments raised at paragraph 2 of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as review of the NAL and NOF, we find that the imposed forfeiture is not in accord with the Act and rules, and is hereby cancelled.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, the petition for reconsideration is GRANTED and the monetary forfeiture is CANCELLED.

5. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to the County of Kern and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Hayward Aero Squadron NAL/Acct. No.215SF0005
Hayward, California

ORDER

Adopted: April 5, 1994; Released: April 12, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Hayward Aero Squadron filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $3,000 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. Section 301. For the reasons noted below, the Bureau affirms the monetary forfeiture.

II. BACKGROUND

2. On May 22, 1992, the Commission's San Francisco Office issued a Notice of Apparent Liability (NAL) to Hayward Aero Squadron. The penalty was imposed for operating an unlicensed transmitter on frequency 121.5 MHz. Based on the response from Hayward Aero Squadron, the San Francisco Office issued a Notice of Forfeiture (NOF) for $3,000 on July 31, 1992. Hayward Aero Squadron now appeals. The Petitioner contends that the license application was not submitted because of an oversight. Petitioner also states that the Hayward Aero Squadron has gone out of business and is, therefore, unable to pay any forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in Petitioner's letter (here treated as a Petition for Reconsideration) have been thoroughly considered and are incorporated herein by reference. Upon review of the arguments raised in the petition as well as review of the NAL and NOF, we find that the petitioner fails to present any new arguments or evidence that was not previously addressed.

4. Although the Petitioner claims that the Squadron club has gone out of business, and is, therefore, unable to pay the forfeiture, no documentation, such as tax returns or financial statements that were requested in the Notice of Apparent Liability, were submitted to support this claim. Accordingly, the forfeiture amount is affirmed.

IV. ORDERING CLAUSES

5. IT IS ORDERED THAT pursuant to Section 503(b) of the Act, 47 U.S.C. Section 503(b), and Section 1.106 of the Rules, 47 C.F.R. Section 1.106, that the petition for reconsideration is DENIED.

6. IT IS FURTHER ORDERED that Hayward Aero Squadron must pay the forfeiture amount of three thousand dollars ($3,000) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215SF0005 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. Section 504(a).

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Hayward Aero Squadron.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Lamond S. Wimer NAL/Acct. No. 215SF0052
c/o Corning Ford
1111 Solano
Corning, California 96021

ORDER

Adopted: April 4, 1994; Released: April 12, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Lamon S. Wimer by his Counsel, Ronald W. Dreifort, filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $8,000 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act). For the reasons noted below, the Bureau reduces the monetary forfeiture amount to $6,400.

II. BACKGROUND

2. On July 10, 1992, the Engineer in Charge of the San Francisco office issued a Notice of Apparent Liability (NAL) to Lamond S. Wimer. The penalty was imposed for unauthorized operation in willful violation of Section 301 of the Act. Based on the response from Mr. Wimer, the Engineer in Charge issued a Notice of Forfeiture (NOF) for $8,000 on August 5, 1992. Mr. Wimer now appeals. The petitioner contends an inability to pay the monetary forfeiture amount. He, also, contends that the unit was found discarded and that he did not realize it would broadcast on an unauthorized channel.

III. DISCUSSION AND CONCLUSION

3. The arguments raised at paragraphs two and three of the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Review of these arguments raised in the petition as well as review of the NAL and NOF, reveals that this being a first offense for Mr. Wimer was not properly considered. Thus, the forfeiture amount will be reduced accordingly.

However, the petitioner claims that he cannot pay the forfeiture and submitted financial information in support of this contention. The financial information does not support this contention and we affirm the forfeiture amount accordingly.

Lastly, although the petitioner claims that he is unable to pay the forfeiture, the petitioner failed to submit adequate documentation, such as the financial information requested in the Notice of Apparent Liability, to support this claim. Therefore, a downward adjustment for inability to pay is not warranted.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED in part and DENIED in all other respects.

5. IT IS FURTHER ORDERED that Lamond S. Wimer must pay the forfeiture amount of six thousand four hundred dollars ($6,400) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.[1] Please place NAL/Acct. No. 215SF0052 on the remittance and mail it to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

6. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Lamond S. Wimer and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

[1] Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Francis E. Foskey NAL/Acct. No. 215PA0024
573 Trinity Pl., Apt. B
Westfield, New Jersey 07090

ORDER

Adopted: April 4, 1994; Released: April 12, 1994

By the Chief, Field Operations Bureau:

I. INTRODUCTION

1. Francis E. Foskey filed a Petition for Reconsideration, requesting reconsideration of the monetary forfeiture of $500 issued for violation of Section 301 of the Communications Act of 1934, as amended, (the Act). For the reasons noted below, we are cancelling the monetary forfeiture.

II. BACKGROUND

2. On July 2, 1992 , the Engineer in Charge of the Philadelphia office issued a Notice of Apparent Liability (NAL) to Francis E. Foskey. The penalty was imposed for $2000. Based on the response from Mr. Foskey, the Engineer in Charge issued a Notice of Forfeiture (NOF) for $500 on July 28, 1992. Mr. Foskey now appeals. The petitioner contends inability to pay the forfeiture.

III. DISCUSSION AND CONCLUSION

3. The arguments raised in the Petition for Reconsideration have been thoroughly considered and are incorporated herein by reference. Upon review of these arguments as well as review of the NAL and NOF, we find that the imposed forfeiture is not in accord with the Act and rules, and is hereby cancelled.

IV. ORDERING CLAUSES

4. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration is GRANTED and the monetary forfeiture is CANCELLED.

5. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to Francis E. Foskey.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief, Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-281

In the Matter of

Rules and Policies Regarding
Calling Number Identification
Service - Caller ID

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Comments due: May 18, 1994
Replies due: June 21, 1994

Adopted: March 8, 1994; Released: March 29, 1994

By the Commission: Commissioner Barrett issuing a statement.

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I. INTRODUCTION.

1. On October 23, 1991, the Commission issued a Notice of Proposed Rulemaking in this docket.[1] More than 100 parties filed comments, including local exchange carriers (LECs), interexchange carriers (IXCs), state governments, public interest organizations, trade associations, and private citizens.[2]

2. In the NPRM, the Commission sought to develop the most effective policies to govern interstate calling party number based services such as caller ID.[3] The NPRM sought comment on carriers' progress in deploying interstate caller ID service, and the technical and public policy implications of dual federal and state regulatory policies.[4] We tentatively concluded that a federal model for the interstate delivery of the calling party's number is in the public interest, and necessary for the introduction of many valuable services, including interstate caller ID.

3. In this Order, we find that a federal model for interstate delivery of calling party number is in the public interest, that calling party privacy must be protected, and that certain state regulation of interstate calling party number (CPN)[5] based services, including interstate caller ID, must be preempted. We amend Part 64 of the rules to require that common carriers using Common Channel

[1] *Rules and Policies Regarding Calling Number Identification Service*, (NPRM), CC Docket No. 91-281, 6 FCC Rcd 6752 (1991).

[2] *See* Appendix B for a list of commenters and corresponding abbreviations used in this order.

[3] Caller ID identifies the calling party's telephone number to the called party. As an intrastate service, caller ID allows subscribers, when they receive local telephone calls, to have the local exchange carrier transmit to them the telephone number of the station originating the call. Called parties must subscribe to caller ID from the local telephone company and purchase or lease number identification devices, which are classified as customer premises equipment (CPE). Technology now being deployed -- end-to-end interconnected Signalling System 7 (SS7) networks -- can support an interstate caller ID service. This proceeding addresses issues in anticipation of interstate caller ID and other calling party number based services becoming available.

[4] NPRM at para. 1.

[5] The calling party number is the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call using SS7. The calling party number parameter includes an associated privacy indicator.

Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit the calling party number parameter and its associated privacy indicator on an interstate call to connecting carriers. We also require that carriers offering CPN delivery services provide, at no charge to the caller, an automatic per call blocking mechanism for interstate callers. The rules require that terminating carriers providing calling party based services, including caller ID, honor the privacy indicator. We find that the costs of interstate transmission of CPN are *de minimis*, and that the CPN should be transmitted among carriers without additional charge. We also require that carriers participating in the offering of any service that delivers CPN on interstate calls inform telephone subscribers that the subscriber's number may be revealed to called parties and describe what steps subscribers can take to avoid revealing their numbers. Further, we adopt rules to restrict the reuse or sale of information generated by automatic number identification (ANI) or charge number services, absent affirmative subscriber consent.[6] Finally, we note that additional comments are sought through a separate public notice in the *Computer III* Remand Proceeding on whether residential and small business customers' privacy concerns warrant revision of the Commission's rules governing reuse and sale of customer proprietary network information (CPNI).[7] In the Further Notice of Proposed Rulemaking, we seek comment on whether more detailed customer education rules should be adopted. We also seek comment on extending the policies adopted herein to other services that might identify the calling party.

II. DISCUSSION.

A. Calling Party Number Services Should be Available to Interstate Subscribers Nationally.

4. *Risks and Benefits.* In the NPRM, the Commission stated its tentative view that the availability of interstate caller ID would enhance the value of the service to intrastate subscribers and augment the available choices of existing interstate services for all subscribers. The Commission noted that the ability to choose caller ID and other services that rely on access to the calling party's number should be available to interstate subscribers nationally.[8] The majority of commenters supported this view and described in detail the potential benefits to the public of services based on the calling party's number.

5. In its comments, AT&T identified potential uses of interstate calling party number for such services as pay-per-view television, order entry/verification, voice message storage, secure computer access, customized customer service, business fraud reduction, call routing, emergency dispatch, health care services, telephone banking, home shopping, dealer locator, and selective call message forwarding. McCaw states that caller information will significantly improve cellular and other service offerings because cellular subscribers pay for incoming calls. Moreover, McCaw notes that ubiquitous caller ID will facilitate cellular enhancements including conventional caller ID, more responsive customer service, new cellular CPE voice synthesizers, and service for roaming subscribers. SNET states that its studies show that caller ID aids persons with hearing impairments in answering calls; law enforcement in determining crank, threatening, false alarm calls and emergency dispatches; and hospital crisis centers in identifying and deterring nuisance calls.

6. In contrast, Colorado DVC asserts that caller ID is not in the public interest because of the threat it poses to the privacy and safety interests of the calling party. Colorado Consumer contends that call trace is the preferable service to stop obscene and harassing calls. Bell Atlantic replies that call trace will not work if another call is received before tracing is attempted, and that customers who have used both caller ID and call trace prefer the former. Consumer Action, Washington UTC, and NYS Law agree with Colorado DVC that caller ID has little merit and may threaten public health and safety as well as jeopardize important privacy interests.

7. While we agree that passage of the calling party number does create risks of lost privacy, we must weigh these risks against the potential benefits brought by interstate services that passage of the calling party's number makes possible. Other services available to protect subscriber privacy, such as Call Trace, are limited in scope and do not permit either the public or service providers to take advantage of beneficial services. The commenters briefly discuss some of these benefits. For example, computer systems could limit remote access only to previously approved calling numbers, with calling party number based services like caller ID making verification for access nearly instantaneous. Service providers who respond to telephone orders, such as stock brokers or parts and equipment dealers, could use the calling party's number to direct the call immediately to the appropriate department for service. Banks could program data sources to have customer profile information available as a call is answered. With interstate delivery of calling party number, calls to national service centers could be routed automatically to local service centers closest to the calling party. Consumers making orders could have their name, address and billing information verified instantaneously. Indeed, a significant number and kind of customized national services can develop as a result of instant recognition of the calling party.

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[6] Automatic Number Identification (ANI) based services were developed in the pre-SS7 (multifrequency) signalling environment as the billing telephone number of the calling party, and are transmitted primarily on toll/access calls on the trunk side connection of the LEC switch. The service is used by LECs and IXCs to identify telephone numbers for billing purposes, but has been made available to customers who subscribe to 800 and 900 services. Delivery of ANI to a subscriber requires a dedicated line between the IXC and the business subscriber and is transmitted directly to that subscriber, bypassing the terminating LEC. *See* NPRM at para. 5. Because it transmits essential billing information and predates SS7 technology, ANI is not blockable in the same way as the calling party number in an SS7 network. In an SS7 environment, ANI may be delivered via a charge number parameter, which does not contain a privacy indicator as does a calling party number parameter.

[7] *See Computer III* Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7605-14 (1991) (enhanced services CPNI rules).

[8] *Id.* at para. 8.

8. Many of these potential services would permit transactions to occur more efficiently. In an economy that averages more than one billion interstate calling minutes a day, even small efficiencies on individual calls could become significant in the aggregate. Providing the public with rapid and efficient interstate telecommunications services is at the heart of our responsibilities, particularly if they can be provided at very little additional cost. As illustrated above, passage of the calling party number can promote technological innovation and new applications that will foster economic efficiency and provide new employment, manufacturing and investment opportunities.

9. None of these services and benefits are possible, however, unless the calling party number is passed freely among carrier networks. It is significant that the categories of those benefiting from these new opportunities are very broad. For example, consumers and individuals benefit by having additional options for meeting their customer service needs and by having transactions completed more quickly and more accurately. As workers and entrepreneurs, they benefit by having new employment opportunities. Businesses benefit because they can complete transactions more quickly, which can lower incremental costs of transactions, potentially leading to savings for consumers. Telephone companies benefit by revenues from new services, and by greater use of their networks. Greater use of CPN based services by consumers and service providers will create incentives for carriers who do not have SS7 networks to install them. This will enhance the nation's telecommunications infrastructure, to the benefit of all who use it. Most of the comments directed against our proposal in the NPRM are based on legitimate concerns that individuals have access to a means of protecting their privacy where doing so is important. We believe technology can address these concerns regarding protections for individual privacy. Accordingly, we find that the potential benefits of services based on calling party number serve the public interest and affirm the NPRM's tentative conclusion that CPN-based interstate services such as caller ID should be available to interstate subscribers nationwide.

10. *Deployment by Carriers.* In the NPRM, the Commission sought detailed comments on carriers' progress toward establishing joint offerings of CPN-based services, and any impediments that have been identified.[9] The record does not reflect extensive response to that inquiry. It appears that although the deployment of the necessary technology for interstate calling party number based services is well underway, other factors have impeded progress. In particular, varying state regulatory responses to privacy issues appear to be impeding the development of interstate services. Moreover, commenters express concern that this lack of national uniformity in regulating interstate SS7 calling party number based services may eliminate a source of the revenues expected from such services. In their comments, Rochester, Ameritech, BellSouth, GTE, McCaw, and US West support a national policy for caller ID because federal standards are essential to achieve the goals of nationwide availability of calling party number based services. McCaw states that it supports a federal policy for caller ID and ANI that accommodates both state concerns and industry diversification and experimentation. In contrast, Allnet contends that there is no compelling federal interest to promote nationwide availability of caller ID and that if there is a demand for interstate caller ID, market forces will assure its availability.

11. The record reflects that national policies on interstate CPN-based services such as caller ID are needed to reduce risks of stranded investment and to remove impediments to development of services consumers are likely to find beneficial. In addition to providing additional choices for consumers, such services offer significant efficiency dividends for all users of interstate telephone services. These efficiency gains promise to lower incremental costs of interstate calling party number based services, including caller ID, and increase national productivity. Carriers may be wary to invest in technology or delivery systems that may later become incompatible with the varying state requirements or incapable of satisfying federal policy. Resolution of privacy, blocking, and preemption issues is necessary to enable the benefits of these services to occur. By removing impediments created by administrative uncertainty, we seek only to resolve those issues necessary for the efficient introduction of the services. The effective date of the rules adopted here will be April 12, 1995, which should allow sufficient time for completion of any coordination or other arrangements, discussed *infra*, necessary for full compliance with the rules.

B. Transmission of the Calling Party Number throughout the Network.

12. In the NPRM, we tentatively concluded that the transmission of the CPN by the LEC to the IXC is an essential element of interstate CPN-based services such as caller ID. The Commission proposed that LECs should be required to provide CPN to IXCs as soon as technologically feasible and, similarly, that IXCs should be required to transmit CPN to terminating LECs.[10]

13. AT&T states that requiring IXCs to transmit interstate CPN to LECs is unnecessary because the competitive market already gives IXCs incentive to offer innovative interstate caller ID services to end users. Moreover, AT&T contends that such a requirement would deprive IXCs of the ability to earn revenues from their substantial investments in SS7 technology. Allnet argues that the requirement would compel all IXCs to participate in SS7 interconnection, thus compromising network integrity.

14. Ameritech, Nynex, Pacific, Centel, and NTIA concur that the Commission should facilitate the provision of interstate caller ID by requiring passage of the calling party's number between carrier networks without modification. MCI agrees that the Commission should require LECs to provide the CPN to IXCs, but it opposes any requirement that IXCs be required to transmit the CPN to the terminating LEC because it states the LEC would then be the lone provider of caller ID. In opposition, BellSouth contends that the transmission of the CPN is essential, and as part of SS7 does not require additional network processing by the IXC nor impose significant cost. Further, BellSouth argues that free delivery of the CPN to terminating LECs would not establish LECs as monopoly providers; rather, IXCs could develop competing CPN-based interstate services that bypass LECs as terminating carriers. NTIA and USTA assert that an IXC's offering of the calling party number

[9] NPRM at para. 11.
[10] *Id.* at para. 12.

should be available through all means of interconnection to end users, including LECs, alternative local service providers, or the IXC itself.

15. Nynex proposes that mandatory delivery of the calling party number parameter among all networks is in the public interest. Further, Nynex supports McCaw's proposal that technical standards for transmission of caller ID and ANI between cellular and landline carriers be developed.[11] However, it notes that cellular carriers do not receive ANI from Nynex because transmission of ANI to cellular carriers is not technologically feasible.

16. We affirm our tentative finding that interstate CPN-based services such as caller ID will not be possible unless the calling party number is transmitted from the originating carrier to the terminating carrier. In our 800 number portability proceeding, major LECs filed access tariffs providing for 800 number portability using SS7 technology.[12] Many Bell Operating Companies (BOCs) have filed access tariffs with CPN as a nonchargeable option. Calling party number is an element of access service in virtually all SS7 access tariffs filed at the Commission and these tariffs follow industry standards for SS7 interconnection. The American National Standard for Telecommunications - Signalling System Number 7 (SS7) - Integrated Services Digital Network, ANSI T1.113, 1988, includes calling party number as an optional parameter of an SS7 network. Similarly, the subsequent BellCore guidelines for SS7 interconnection with a BOC include CPN as an optional parameter.[13]

17. We conclude that carriers should pass calling party number information where capable of doing so. In view of the foregoing, we amend Part 64 of the rules to require that not later than April 12, 1995, common carriers using Signalling System 7 and subscribing to or offering any service based on SS7 functionality must transmit the calling party number parameter and its associated privacy indicator to connecting carriers on an interstate call.[14] Further, we amend the rules to prohibit common carriers from modifying or overriding the privacy indicator on an interstate call. We emphasize that carriers are not required to invest in SS7 technology in order to facilitate delivery of the calling party number. Carriers are only required to transmit the CPN and privacy indicator where technically feasible. Because transmission of the calling party number requires SS7 technology, technical feasibility exists wherever SS7 technology is used. We now turn to the issue of the costs associated with the transmission of the CPN.

C. Costs of Interstate Transmission of Calling Party Number.

18. Most IXC commenters contend that, if required to transmit the calling party number, IXCs should be compensated for such transmission. AT&T avers that IXCs incur costs in acquiring and delivering interstate CPN and that its decision to invest in SS7 rested in part on the anticipation of revenue from new services such as caller ID. MCI concurs with AT&T and further contends that IXCs already pay for calling party numbers as part of feature group D switched access and are developing services which will provide the called party with the calling party's telephone number. Allnet proposes that IXCs who do not voluntarily engage in forwarding caller ID should not bear any of the costs of deployment. Metromedia argues that carriers terminating calls should be responsible for billing those called parties subscribing to interstate caller ID where appropriate; terminating carriers should compensate IXCs passing the information.

19. Nynex believes that if the CPN is passed freely from carrier to carrier, then each carrier may use it to provide services to end users, consistent with cost-based rather than market-based pricing for Open Network Architecture service offerings. Bell Atlantic agrees that if IXCs are allowed to charge for calling party number the cost to consumers will be unnecessarily increased. United States that a single price established in the local jurisdiction for all caller ID regardless of jurisdiction is appropriate. United cites to the precedent for local service pricing of custom calling features like call forwarding of interstate toll calls.

20. SWB concurs with other commenters that CPN should be passed from carrier to carrier at no charge because it is an intrinsic part of SS7 call setup and no cost is associated with filling the calling party number parameter in the SS7 message. SWB disagrees with IXCs such as AT&T, MCI, and Allnet which assert that charging for passage of the CPN would permit them to share in revenues from the LEC's services that depend on passage of the calling party number. In essence, states SWB, the IXCs want to charge for the passage but receive it free. SWB proposes that the Commission require passage at no charge, thus eliminating extra charges which would be passed on to consumers.

21. McCaw agrees with SWB that CPN should be passed free of charge. McCaw asserts that to encourage maximum possible participation of all carriers as co-equal carriers, the Commission should prohibit compensation among carriers that pass ANI or caller ID information because the costs of ANI and caller ID are recovered in the overall SS7 costs. Centel argues that IXCs should be prohibited from charging either the originating or terminating LEC for transport. Centel asserts that revenue sharing issues should be resolved between carriers, and notes that it would cost IXCs more to remove the CPN from their systems than to allow passage to terminating LECs.

22. CFA, Colorado DVC, Maryland PC, Michigan PSC and others argue that costs associated with caller ID should be borne by subscribers to the service. The Illinois CC notes that it has ordered that the costs of providing per call blocking be borne by those who subscribe to caller ID. IIA proposes that the per call blocking costs should be imposed upon the calling party on the theory that suppression of the calling number is a special service the cost for which should be borne by the party who chooses to invoke it. Consumer Action contends that LECs are improperly allocating the costs of the SS7 switches and supports this contention with data which it believes show that the body of ratepayers is subsidizing SS7-based service, which only benefits 5-6% of telephone customers.

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[11] *See* discussion of ANI in Section F, *infra*.

[12] Provision of Access for 800 Service, 4 FCC Rcd 2824 (1989), *modified*, 6 FCC Rcd 5421 (1991).

[13] Common Channel Signalling (CCS) Network Interface Specification, Bellcore, TR-TSV-000905 (Issue 1, August 1989).

[14] *See* Appendix C.

23. We find that the unimpeded flow of the calling party number throughout the network ensures the greatest diversity of offerings to subscribers and eliminates costs that can delay or impede development of CPN based services. To the extent these services improve productivity, lower incremental costs and create new employment, investment and other opportunities, they benefit a wide range of consumers and producers. As noted above, industry standards already include calling party number as an optional parameter of an SS7 network, and the calling party number is an element of access service in virtually all SS7 access tariffs filed at the Commission. In most cases, SS7 signalling replaces older signalling methods used in an IXC network and provides benefits to the carrier such as more efficient call routing and reduced exposure to fraud. We thus conclude from the record before us that the costs of transmitting CPN are *de minimis*, and that accordingly, the calling party number parameter and associated privacy indicator should be transmitted among carriers at no additional charge.

D. Interstate Caller ID Privacy Issues.

24. In the NPRM, we balanced the privacy interest of the called party against the privacy interest of the caller and proposed that interstate caller ID should include some measures to protect calling parties' privacy. We sought comment on whether these privacy interests are matters of public policy or are constitutional in nature. We noted that any regulatory response to protect the privacy interest of the calling party should take into account the public benefits of caller ID and should not undermine the value of the service overall.[15] Most commenters agree that societal expectations of privacy require that interstate caller ID include some type of privacy protection mechanism.

25. *Constitutional Issues.* AT&T contends that the provision of interstate caller ID by private telephone companies does not implicate the U.S. Constitution, which, AT&T argues, does not regulate private activity relevant to this proceeding. GTE concurs with AT&T and adds that in recent cases the courts found no state action was involved when a LEC refused to provide communications service or billing and collection service to dial-a-porn providers.[16] Further, GTE argues that in *Smith v. Maryland*, 442 U.S. 735 (1979), (*Smith*), the U.S. Supreme Court held that there is no federal constitutional protection from disclosure of digits dialed on the network.

26. In opposition, Georgia CUC cites to testimony before the Georgia PUC that concludes that information is constitutionally protected when a legitimate expectation exists that the information will remain confidential.[17] California PUC contends that there exists a non-frivolous claim that the First Amendment right to free speech includes a right of the calling party not to be compelled to disclose his or her telephone number.[18] Ohio OCC concurs that there is an identifiable federal constitutional privacy interest that includes telephone digits and supports this argument citing *Griswold v. Connecticut*, 381 U.S. 479 (1965) (the right to make decisions about procreation) (*Griswold*), and *Whalen v. Roe*, 429 U.S. 589 (1977) (individual interest in avoiding disclosure of personal matters) (*Whalen*). Pennsylvania PUC states that the Commonwealth Court of Pennsylvania held that caller ID is *per se* unconstitutional under the Pennsylvania state constitution because of the theoretical risk that a caller wanting to remain anonymous would accidentally forget to use the available blocking feature.

27. The record and case law demonstrate that there is no federal constitutional bar to the offering by carriers of CPN-based services such as caller ID. In *Smith*, the Supreme Court held that there is no privacy right under the Fourth Amendment protecting telephone numbers from disclosure because the application of the Fourth Amendment depends on whether first, the person invoking protection can claim that a "legitimate expectation of privacy" has been invaded by the government. In *Smith*, pen register records kept upon police request by a telephone carrier on calls made by a robbery suspect became evidence used to convict him on robbery charges. At issue was whether seizure by police of the record of phone numbers that the suspect called constituted a "search" for Fourth Amendment purposes and thus required a warrant. The court's decision rested upon analysis of whether the individual exhibits an expectation that something will remain private, and second, whether the individual's subjective expectation of privacy is one which society is prepared to recognize as objectively reasonable. *Smith* at 740. The court held that the expectation of privacy for phone numbers is not one that society is prepared to recognize as reasonable, because when one voluntarily exposes his phone number to the telephone company's equipment, one assumes the risk that the company may reveal the number to others. *Id.* at 743-45. The Court also drew a distinction between the content of a phone conversation and the number dialed and found that protecting the content is more important than the number dialed because phone numbers are not communication in and of themselves, but merely establish that communication has been attempted. *Id.* at 741.

28. The Pennsylvania state court ruling cited by the Pennsylvania PUC does not suggest otherwise. The Commonwealth Court struck down Pennsylvania PUC's order which had approved caller ID in part because the court found that, even with a blocking mechanism, caller ID violates Pennsylvania constitutional privacy rights.[19] The constitutional privacy right asserted in *Barasch* rests on the court's interpretation of the Pennsylvania Constitution. *Id.* at 87, 89. However, the U.S. Constitution is not cited in *Barasch* as imposing any privacy right in a phone number; indeed, such an interpretation would be inconsistent with *Smith*. Moreover, on appeal, the Supreme Court of Penn-

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[15] NPRM at paras. 14-15.

[16] GTE cites *Dial Information Services Corp. of New York v. Thornburgh*, 938 F.2d 1535 (2d Cir. 1991), (*DISC*), and *Information Providers' Coalition v. FCC*, 928 F.2d 866 (9th Cir. 1991), (*Information Providers*).

[17] Georgia CUC also cites *Mangels v. Pena*, 789 F.2d 836, 839 (10th Cir. 1986), (*Mangels*).

[18] California PUC cites *Pacific Gas and Electric Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1, 10-11 (1986) for the proposition that an individual's First Amendment right not to speak may not be vitiated as a condition for his/her use of the telephone network.

[19] *Barasch v. Pennsylvania Public Utility Commission*, 576 A.2d 79 (Pa. Cmwlth. May 30, 1990), *aff'd sub nom, Barasch v. Bell Telephone Co. of Pennsylvania*, 605 A.2d 1198 (Pa., March 18, 1992) (*Barasch*).

sylvania held that caller ID violates the "trap and trace" provisions of the state wiretap law and did not address the constitutional privacy issue.[20]

29. GTE cites two cases (*supra*, note 16) in support of the principle that common carriers are private entities and thus no state interference with individual privacy rights is involved. *DISC* involves a challenge by dial-a-porn companies to the Helms Amendment, 47 U.S.C. §§ 223 (b) & (c), which allows phone companies to require dial-a-porn services to notify them that they will be providing indecent messages and/or to require dial-a-porn services to utilize independent billing. The Court of Appeals held that no prior restraint of free speech was created by the statute because no governmental action was involved. The statute merely permits phone companies to choose whether to provide billing services to dial-a-porn companies. Similarly, *Information Providers* involves a challenge to Section 223 of the Communications Act of 1934, as amended, 47 C.F.R. § 64.201 (1991). The court held that carriers are private companies, not state actors, and are, therefore, not required to continue, restrict, or terminate services of particular users and that a carrier is free under the constitution to terminate service to dial-a-porn operators altogether. These cases generally support the proposition that when a carrier can choose whether to offer certain services, no state action is involved.

30. On the basis of this body of law and the record, we find that the offering of caller ID does not violate privacy rights protected by the U.S. Constitution.[21] Constitutional protections of privacy relate to government action and no government action is involved here. Moreover, we find that federal courts have not, to date, recognized an individual privacy right in telephone numbers. [22]

31. *Public Policy and Privacy Mechanisms.* The majority of commenters agree that the privacy interests associated with caller ID are a matter of public policy or societal expectation. California Consumer Affairs proposes that federal interstate caller ID policies must recognize that the governmental interest in protecting public health, safety and welfare dictates that some blocking option be available. NY Law Project underscores that with a relatively inexpensive personal computer and a CD ROM reader, a business caller ID subscriber could access data bases and display a data profile of a caller even before the telephone is answered, or while the call is in progress. SWB recognizes the need to protect the confidentiality of non-published numbers, undercover police officers, domestic violence shelters, and the integrity of hotlines. Massachusetts contends that the effective functioning of law enforcement in Massachusetts would be compromised if caller ID were offered without a privacy protection mechanism. GTE, however, asserts that tariff language requires that the caller identify himself to the called party.[23] Nynex contends that caller ID redresses a longstanding imbalance which favored the calling party because the called party had no information on which to decide whether or not to answer the telephone.

32. BellSouth proposes that with all number delivery, callers can protect their identity by calling from telephones not recognizable by the called party. BellSouth states it has developed specialized service offerings for the privacy concerns of law enforcement and domestic violence shelters. Bell Atlantic also advocates unrestricted delivery on the premise that per call blocking is used infrequently and provides malicious callers the opportunity to continue to make harassing calls. MCI states that delivery of the calling party number should be unrestricted because unlimited availability of customer initiated blocking will undermine the service and diminish its value to the public. However, MCI concurs with BellSouth that limited blocking should be available to protect public safety groups. USCG proposes that any blocking mechanisms not apply to calls made to United States Coast Guard emergency telephone numbers. USTA is in favor of unrestricted delivery of caller ID across all carrier networks, whether interstate or intrastate. However, USTA proposes that per call blocking for specific applications may be appropriate.

33. IIA argues that unrestricted delivery of caller ID threatens a broader concept of information privacy -- a right of the individual to control the dissemination of information about one's self and one's activities. Kentucky states that Bell Atlantic's claims of reduced harassing and obscene calls appear to be more a function of changes in the handling and routing of such calls than any real reduction on the actual placing of these calls. Ohio OCC states that unrestricted delivery of caller ID would undermine the ability of professionals who must work from their residence, and that public hearing testimony in Ohio resounded with consumer objections to disclosure of non-published numbers.

34. Most commenters do not advocate completely unrestricted delivery. Even those commenters that advocate unrestricted delivery suggest a limitation on availability of the CPN under specific circumstances. In light of the extensive record before us, we conclude that a regulatory framework for interstate CPN-based services such as caller ID should include some type of privacy protection mechanism. We affirm our prior tentative conclusion that the calling public has an interest in exercising a measure of control over the dissemination of telephone numbers that must be reflected in federal policies governing caller ID service. We discuss specific privacy mechanisms in Section E below.

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[20] In December of 1993, Title 66 of the Pennsylvania Consolidated Statutes was amended to declare that caller ID is a lawful service if it permits a caller to withhold display of the caller's telephone number and other identifying information from the called party on both a per-call and per-line basis. *See* 66 PA. CONS. STAT. §2906 (1993).

[21] *Mangels, Griswold,* and *Whalen* are inapposite. As the Court said in *Mangels,* "[t]he legitimacy of any individual's expectation [of privacy] depends, at least in part, upon the intimate or otherwise personal nature of the material...." *Mangels* at 839. As the Court held in *Smith,* telephone numbers do not rise to a level of personal or intimate information.

[22] The California PUC's reliance on *Pacific Gas. v. California* to link caller ID services with a constitutionally protected right not to speak is misplaced. In *Pacific Gas v. California* the Court considered whether the California PUC could require a privately owned telephone utility to include in its billing envelopes speech of a third party with which the utility disagrees. The Court held that the California PUC's order impermissibly restricted billing envelope access to only views with which the telephone utility disagreed. In no instance did the Court reconsider its prior holding in *Smith* that there is no constitutionally recognized expectation of privacy that attaches to phone numbers.

[23] GTE cites, *inter alia,* GTOC Tariff FCC No. 2 Section 2.3.1; AT&T Tariff F.C.C. No. 1, Section 2.4.1.C.

35. *Private Networks, Emergency Services, and Law Enforcement.* AT&T proposes that there should be no blocking mechanisms prescribed for private or virtual private networks because blocking on business services and on private networks would intrude on the rights of private and virtual private network owners to determine the amount of information delivered on internal calls carried on their networks. AT&T and GTE concur that business services do not commonly implicate personal safety concerns and in a business context, identification is expected. The NPRM sought comment on whether blocking mechanisms jeopardize calling party identification by emergency services. USCG states that blocking mechanisms should not apply to calls made to emergency telephone numbers because they could degrade emergency service operations. Pacific Bell notes that emergency services could be affected where an individual calling line identification display device is being used in place of the standard public safety answering point console arrangement.

36. In the NPRM, we proposed that the privacy requirements adopted herein to address the privacy concerns within the public network should not apply to communications within private or virtual private networks. We affirm that privacy expectations of the calling party are different when they arise in the context of internal calls within a single private network. Moreover, commenters did not dispute that caller ID systems raise very limited privacy expectations if used solely in connection with legally authorized call tracing and trapping procedures specifically requested by a law enforcement agency. We do not apply the privacy requirements adopted in this order to these narrow sets of circumstances.

37. The record indicates that blocking mechanisms do not affect Enhanced 911 services, which currently locate the calling party on emergency calls via ANI rather than SS7-based caller ID services, which include blocking mechanisms.[24] However, as indicated by USCG and Pacific Bell, blocking mechanisms may jeopardize emergency services which rely on caller ID and thus pose a serious threat to public health and safety.[25] To the extent that CPN based services are used to deliver emergency services, we find that privacy requirements for CPN based services should not apply to delivery of the CPN to a public agency's emergency line, a poison control line, or in conjunction with 911 emergency services. We now turn to specific privacy protection mechanisms for assuring that the interstate public network includes a privacy protection option.

E. Privacy Protection Mechanisms, Further Notice of Proposed Rulemaking.

38. The three privacy protection mechanisms prevalent at the state level are (1) per line blocking provided by the telephone company for specific groups (2) per line blocking provided by the telephone company for all customers except those who want their telephone numbers to be delivered, and (3) per call blocking on an automatic or operator assisted basis. Additionally, these options can be offered in combination and free to the user or on a fee basis. In the NPRM, we sought comment on and analysis of the relative merits, technical feasibility and foreseeable costs to carriers and customers of establishing a requirement that interstate caller ID incorporate a per call blocking option.[26] The record demonstrates ample support for the adoption of an automatic per call blocking requirement on interstate caller ID offerings. We discuss each alternative below and affirm the tentative conclusion reached in the NPRM that carrier provided per line blocking mechanisms are unduly burdensome. We affirm that automatic per call blocking is the most responsive alternative to the needs of calling and called parties for interstate calls. Finally, we request comment on whether, and how, these policies should apply to other services, such as delivery of the calling party name.

39. *Per Line Blocking for Specific Groups.* Pennsylvania PUC states that per call blocking should be available to all subscribers, but free per line blocking should be made available to groups that demonstrate a higher privacy need than the population at large. These groups include nonprofit, tax-exempt domestic violence agencies; home telephone numbers of staff members of such agencies; federal, state and local law enforcement; and individuals who have a need for blocking to mitigate the risk of personal injury, as certified by a law enforcement agency. MCI proposes a limited blocking option to protect public safety groups. US West states that its experience with free per line blocking for "special needs" subscribers proved cumbersome and unfair because US West is uncomfortable with determining what groups or individuals have special needs.

40. Commenters that advocate the availability of per line blocking only for certain groups with heightened privacy needs do not address how this mechanism would be implemented on an interstate basis. The two entities that could determine eligibility for privacy protection under this proposal would be the carriers or the government. If the choice is left to the carrier or carriers offering interstate caller ID, the carrier must determine which individual subscribers are entitled to privacy protection. Issues that arise in this determination include: Do certain types of law enforcement personnel have greater needs than others? Do domestic violence shelters have greater needs than teenage runaway facilities? Do individuals who work for these organizations have needs? How would these individuals be identified? How would determinations be kept current? What appeal rights would be available? These social questions are generally not the type of issues resolved by carriers. We conclude, on the basis of this record, that per line blocking for a special needs category as a federal model is not optimal. It would unnecessarily increase the role of the federal government or carriers in making privacy choices for subscribers. Other regulatory alternatives to address privacy are available on a more equitable basis and do not unduly hamper the viability of CPN based services.

41. *Per Line Blocking Available to All Subscribers.* Consumer Action contends that the only way to ensure that all residential customers do not involuntarily deliver their numbers to caller ID equipment is to require availability of per line blocking. Consumer Action supports its argument that per line blocking would not undercut the usefulness of caller ID by citing Centel's statement that, after 6 months of offering caller ID with a per line blocking option, there was no substantial decrease in individuals subscribing to

[24] *See, e.g.,* Nynex at 14, n.18.
[25] *See* Appendix C, § 64.1602(d).
[26] NPRM at para. 20.

caller ID. Missouri Counsel states that the absence of free per line blocking effectively eliminates the protection that unlisted numbers provide.

42. DMA asserts that per line blocking would drive up the cost of service and further, that if per line blocking becomes widespread, direct marketers may be unable to use caller ID service for a substantial segment of their customer base, and smaller businesses may find the service unattractive. Rochester notes that in a survey it conducted, 66% of respondents made 75% of their calls to people who already knew their telephone number, and 83% made at least 50% of their calls to people who knew their number. Rochester concludes that per line blocking is only marginally useful and substantially degrades the value of caller ID by causing unnecessary blocked calls. USTA concurs that in the vast majority of calls, identification of the calling number is of little consequence to the calling party. AT&T points out that per line blocking destroys the lifesaving potential of caller ID for line blocked callers of emergency numbers such as police stations because a caller in distress may forget how to use the unblocking code.

43. In the NPRM, we tentatively concluded that per line blocking unduly burdens calling party number based services overall by failing to limit its applicability to those calls for which privacy is of concern to the caller. The Commission noted that even in the case of law enforcement personnel, there may be a need to maintain calling number privacy on some calls, but that the same number may be used to telephone other law enforcement personnel, victims of crimes, cooperative witnesses, and family or friends. The Commission asserted that in these types of calls, calling number privacy is not needed and calling number identification can actually be a valuable piece of information for both the caller and called parties. The record reflects the useful nature of CPN based services, and the comments of Rochester illustrate that callers are likely to be interested in blocking only a small percentage of their calls. The comments of USCG illustrate the usefulness of caller ID to emergency services. In contrast, Missouri Counsel's analogy to unlisted numbers is inapposite because caller ID only permits parties called by the calling party to capture the calling party number, and then only if the calling party has not activated a per call blocking mechanism. We find that the availability of per call unblocking does not cure the ill effects of per line blocking. Moreover, in an emergency, a caller is not likely to remember to dial or even to know to dial an unblocking code. For the foregoing reasons, we find that a federal per line blocking requirement for interstate CPN based services, including caller ID, is not the best policy choice of those available to recognize the privacy interests of callers. Thus, carriers may not offer per line blocking as a privacy protection mechanism on interstate calls. We agree that certain uses of captured calling numbers need to be controlled, and address that issue *infra*.

44. *Operator Assisted Per Call Blocking.* There is little support in the record for operator assisted per call blocking. Live operator assisted blocking may have a chilling effect on callers who do not choose to disclose the calling number. Dialing three additional digits to invoke privacy as is required with automatic per call blocking is much less cumbersome to the caller than having to connect to a live operator and explain that the caller wishes to place an anonymous call. The practical effect of a system of operator assisted blocking appears to be that privacy is not invoked, based on the Canadian experience wherein out of one million calls, only two were blocked.[27] We also note that live operator assisted blocking was not envisioned as part of the technology of caller ID during the SS7 standards setting process. The ANSI and Bellcore standards contemplate automatic per call or per line blocking. If the advanced technology of the network is capable of sustaining an automated blocking function, it is not in the public interest to ignore the technology and require less efficient, more cumbersome live operator assistance.

45. *Automatic Per Call Blocking.* Under this approach, a caller dials a three digit code, *e.g.* *67 (or 1167 for rotary or pulse-dialing phones), to indicate that the calling number should be blocked. The majority of commenters supporting a per call blocking system advocate an automatic free per call method. For example, the Ad Hoc Users and NTIA state that per call blocking best balances the privacy interests of both the calling and the called party. Although Bell Atlantic opposes blocking, it states that if the Commission decides to require blocking, per call rather than per line should be adopted. The IIA notes that several states already require free per call blocking. Further, IIA proposes that the Commission take into account that consumer expectations have solidified on this issue.

46. We agree with the majority of commenters that availability of automatic per call blocking best addresses the privacy needs of both the calling and called parties. We note that the majority of jurisdictions using this method on a local basis are using *67 (or 1167 for rotary or pulse-dialing phones) as the dialing digits and we adopt the same dialing method in our interstate rules. As discussed in the NPRM, a regulatory approach to privacy should not be so burdensome to the service that it destroys its value and thus fails to take into account the privacy needs of the called party. Per line blocking has this effect. On the other hand, a blocking mechanism should not be so difficult to invoke as to fail to recognize the legitimate privacy concerns of some callers. Operator assisted blocking has this effect. The best balance for the competing interests of the calling and called parties is automatic per call blocking. The option of dialing a few additional numbers to invoke privacy when privacy is sought is a beneficial service that should be available to consumers. Similarly, caller ID is beneficial to the called party who should be able to receive the calling party number in all instances where identification of the calling number is of no consequence to the caller or where the caller may desire identification.

47. The rules require per call blocking as the model for privacy protection on interstate calls. As a matter of simplicity and uniformity, per call blocking allows callers to travel from phone to phone and make an informed privacy decision. Per line blocking may create caller confusion when a caller places a call from a phone over which the caller may be uncertain whether it is equipped with per line blocking. It appears that some carriers offering per call

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[27] *See Bell Canada - Introduction of Call Management Service*, Telecom Decision CRTC 90-10 (May 9, 1990). The Canadian Radio-television and Telecommunications Commission now requires free automatic per call blocking; Bell Canada has discontinued free operator assisted per call blocking. See *Call Management Service - Blocking of Calling Number Identification*, Decision CRTC 92-7 (May 4, 1992).

unblocking together with per line blocking use the same *67 code both for unblocking presubscribed privacy lines and for blocking lines that are not pre-blocked. Thus, a caller may inadvertently disable privacy protection by dialing *67 (or 1167 for rotary or pulse-dialing phones) to invoke privacy from a phone that is already subscribed to per line blocking. A per call blocking system avoids this unintended result and allows callers to make decisions according to the unique calling circumstances of each call. Automatic per call blocking is easily used on a ubiquitous interstate basis, and eliminates customer confusion.

48. Our objective in this proceeding is to establish federal policies governing the passage by carriers of CPN on interstate calls. We believe carriers should provide callers the option of withholding their numbers from called parties on a per call basis. It is important to note, however, that consumer choice is not limited to the options provided by carriers. Various companies have registered with the Commission, under provisions of Part 68 of our rules, equipment that, for example, automatically would insert a blocking prefix on each call going out over a particular line. Such devices are available for as little as $40.00 per unit. We believe general interstate passage of CPN throughout the telephone network, except in those individual circumstances where privacy is important to the calling party, promises important efficiency and productivity gains for our economy. However, individuals wishing to install these devices and thereby screen all originating interstate calls may elect to do so.[28] Such a choice may create caller confusion if others entitled to use the line are unaware of the purpose of the device, or may place health and safety at risk if the device conceals the calling party's location or identity from emergency services, but these are not harms to the network. Requiring callers seeking universal blocking to purchase such devices, however, ensures this choice is not made lightly.

49. The majority of commenters supporting per call blocking also propose that per call blocking be free to the calling party. We note that this is in keeping with the blocking policies adopted by the majority of states for intrastate calls. Per call blocking capability is an inherent capability of SS7 technology. The design of caller ID contemplates the use of software programs that permit either a customer to activate a "block" on any particular call, or the central office to activate a block on the line. In no circumstance is the information actually "blocked" from the carrier; the terminating central office will receive the calling number. In addition, on all interstate calls handled by SS7, the call setup message contains a calling party number parameter that includes a privacy indicator. Under our rules, this "privacy flag" travels with the call setup message through to the destination central office of the terminating carrier. Thus, there are no significant additional SS7 costs associated with per call blocking. Several commenters note that there are costs associated with populating the privacy flag at the originating end and reading it and passing it on to the subscriber at the terminating end. Our requirement that carriers transmit CPN includes the provision of per call blocking capability at the originating end and of facilities that read and honor the privacy indicator at terminating end. Any blocking costs can be readily absorbed because the calling party number and privacy flag are integral elements of SS7. Moreover, we find that charging the caller for per call blocking beyond the costs of deploying SS7 would disrupt the balance that per call blocking establishes between the privacy interests of the caller and called party. Charging for per call blocking heightens the burden upon the caller to invoke privacy and does not appear to be necessary for the overall viability of the service.

50. *Applicability to Additional Services.* In addition to calling party number delivery, SS7 technology permits delivery of calling party name via an optional parameter that is separate from the calling party number parameter.[29] We tentatively conclude that our policies for calling party number delivery should apply equally to services delivering calling party name, and we seek comment on this tentative conclusion. Commenters should address any differences that may exist in the privacy considerations that apply to calling party name delivery as opposed to calling party number delivery. Commenters should also address whether the policies for subscriber privacy should extend to other services, such as services that permit subscribers to automatically return calls or to selectively forward calls.

F. ANI and Caller Privacy.

51. In the NPRM the Commission noted that interstate ANI, or its SS7 equivalent "charge number" parameter, already identifies the billing number of a call to interstate subscribers of ANI service, and is used by the LECs and IXCs for billing purposes. IXCs, however, sometimes deliver ANI to 800 and 900 service subscribers via a dedicated line. The NPRM requested comment on whether there are privacy interests associated with the transmission of ANI to 800 and 900 service subscribers or information service providers, and if so, what approaches should be considered to address the issue. The Commission noted that one possible approach would be to require businesses to obtain the consent of the caller before revealing the caller's telephone number to any third party. In this order we adopt such an approach.[30]

52. The majority of commenters conclude that it is not technically feasible to block identification of ANI-based interstate calling number in the same way as SS7-based calling party number because it is the billing number that LECs must provide to IXCs. Allnet proposes that LECs be required to provide a privacy indicator with ANI. AT&T notes that ANI or the SS7 equivalent "Charge Number" do not currently have a privacy indicator that would signal the terminating carrier to block the passing of the billing telephone number to the called party. AT&T concludes that blocking requirements adopted by the Commission should not extend to the delivery of ANI. Nynex notes that under its SS7 interconnection tariff, in those cases where the billing number and the CPN are the same, the calling party number parameter will provide the billing number and the charge number will not be sent. Nynex adds that, where

[28] The policy underlying Part 68 registration of customer premises equipment is that consumers should be able to attach to the telephone network devices they find to be privately beneficial that are not publicly detrimental, in other words, that do not cause harm to the network.

[29] State public utility commissions in Texas and Minnesota have approved calling party name and number delivery services. *See* National Association of Regulatory Utilities Commissioners *Bulletin*, May 24, 1993 and July 26, 1993.

[30] *Id.* at para. 29 and n.49.

there is a difference between the billing number and the calling party number, the charge number parameter will provide the billing number.

53. Citicorp contends that proposals to limit the use of ANI are contrary to the Communications Act's purpose of promoting new telecommunications technologies. Illinois CC states that ANI is needed to promote competition, and to restrict the use of ANI in any way would undermine this policy goal. Ad Hoc Users, ARINC, and Citicorp identify many beneficial uses of ANI transmission.[31] Ad Hoc Users adds that these significant benefits are unfairly characterized by NYS Law as a "plague of unsolicited marketing calls." It notes that prohibiting transmission of ANI would shut down existing ANI applications and would not allow new applications until SS7 interconnection of LECs with IXCs is almost ubiquitous.

54. IIA states that because the transmission of ANI cannot be blocked, the focus must shift from whether the called party receives it to how the recipient uses the data. It states that questions presented by use of ANI data are transitional and ANI subscribers can be expected to migrate to SS7-based caller ID. In the meantime, IIA proposes the Commission rely upon voluntary and industry initiated efforts to explain to consumers how information about them is gathered and used. NARUC argues that denying commercial ANI purchasers the information ANI provides will give carriers an incentive to expedite development of CPN based services. Baer, Colorado DVC, Consumer Action, Michigan PSC, and others suggest that if the Commission allows for either per line or per call blocking, then it should also restrict the availability of ANI exclusively to LECs and IXCs. NTIA recommends that the Commission direct interested carriers and manufacturers to report on the modifications needed to implement caller blocking of ANI to the called party and formulate a plan for so modifying existing ANI over a period of years. Sprint concurs that ANI should be subject to privacy indicators, insofar as technology permits.

55. Unlike the privacy indicator that can be placed on the calling party number with respect to caller ID, the calling party cannot place a privacy flag on ANI or its SS7-based equivalent, the charge number parameter. Therefore, some parties suggest that the availability of ANI be restricted exclusively to LECs and IXCs, and should not be passed on to 800 and 900 service subscribers for billing, routing, or other purposes.[32] Other commenters respond, however, that ANI is needed to sustain beneficial services currently offered.

56. We conclude that the public interest would be served by continuing to permit telephone companies to deliver ANI to 800, 900, and other business subscribers who pay for transmission of the call. ANI has been available to these end users without a privacy mechanism for several years and, as indicated above, has spurred a multitude of beneficial applications. While we are concerned that callers' reasonable expectation of privacy not be violated, we do not believe that the public would be served by terminating all access to ANI by subscribers to 800 and 900-type services. Ad Hoc Users points out that ANI service permits the receipt of calling numbers in real time but would not usually provide information beyond that which such subscribers will receive in any event on their telephone company bills because the called party pays for the call. It states that such realtime provision of ANI benefits calling parties by permitting a number of substantial customer service enhancements.

57. In weighing these various public interest concerns, we are aware that the continued deployment of SS7 throughout the telephone networks makes available a blockable alternative to ANI.[33] However, where the called party pays for the interstate call (*e.g.*, 800 and 900 service subscribers), the situation is somewhat analogous to a collect call regarding expectations of confidentiality by the calling party. We believe the best approach is to require education by the carriers (see Section G, *infra)* and to restrict how 800 and 900-type service subscribers may use ANI data. Resale of the ANI number to create marketing lists or other information about callers without their consent has generated much of the opposition to the availability of ANI. Bills to restrict such practices have been introduced in Congress and commenters in this proceeding have addressed the implications of unrestricted availability of information about callers. Colorado DVC, NTIA, and others urge the Commission to prohibit the resale or use of ANI for uses other than call management, billing, or customer services employed directly by the subscriber to ANI end user services. To address these privacy concerns, we prohibit the reuse or sale of ANI information by 800, 900, and other service subscribers absent affirmative subscriber consent. We permit the use of ANI for call management and routing functions.[34]

58. Concerns also have been expressed regarding the use of ANI by 800 and 900-type service subscribers for solicitation. For example, ANI can be used to place return calls to telephone customers who previously have contacted an ANI 800 or 900-type services subscriber. In this regard, Nynex proposes that use of ANI be limited to performing and verifying transactions requested by the caller. ARINC, on the other hand, argues that such a restriction would diminish too severely the value of ANI for businesses and customers. We conclude that an ANI services subscriber may use ANI to offer products or services to an established

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[31] Ad Hoc Users states that such applications include giving immediate medical assistance data to technicians who have been called by patients with pacemakers, use of ANI by investment firms as a check against fraud, use of ANI to process orders for pay-per-view cable television, routing of callers to specialized agents or announcements, business to business automated ordering and ANI-based employee dispatching. ARINC states that many airlines use ANI via their 800 service reservations networks to provide better service to regular customers, to verify telephone billings, to route calls among reservation centers, to detect fraud and to identify threatening calls. Citicorp notes that ANI can be used for customized customer services, telephone banking and home shopping, saving unnecessary holding time, retrieval of a customer's prior transactions, service representative calling back when a customer is cut off, and triggering letters to poll customers to determine deficiencies of service.

[32] *E.g.*, Baer, Colorado DVC, Consumer Action, Michigan PSC.

[33] In an SS7 environment, if the calling party number and the charge number of a telephone subscriber are identical, the CPN and its associated privacy indicator may be used for billing purposes. *See* Nynex at 5, n.3.

[34] *See* Appendix C, Section 64.1602. *See also* 47 C.F.R. Section 64.1504(c) (prohibits use of 800 service to provide information services unless the calling party has a "presubscription or comparable arrangement" with the information provider).

customer that are directly related to products or services previously provided by the ANI services subscriber to that customer.[35] ANI services subscribers may also wish to compile ANI information in an aggregate form, either to improve operations or as a marketing tool. Our rules permit disclosure of ANI information in aggregate form if it is compiled in a manner which precludes identification of individual telephone subscribers.[36]

G. Subscriber Education, Further Notice of Proposed Rulemaking.

59. In the NPRM, the Commission stated that carriers offering calling party number, or facilitating transmission of interstate caller ID, should be required to inform callers of the availability of the service, including instructing callers how to implement any caller privacy mechanisms.[37] The Commission noted that no segment of the calling public can adequately control dissemination of the calling number under any regulatory structure if they are unaware that their calling number is being identified.[38] The majority of commenters agreed that subscriber education is in the public interest and should be implemented with the introduction of interstate calling party number based services, including caller ID. Commenters also expressed concern over the education of callers whose numbers are identified via ANI-based services.

60. We affirm our tentative conclusion that deployment of interstate calling party number services should be accompanied by consumer education regarding the availability of identification services and how to invoke the privacy protection mechanism. The record indicates that consumer information is essential to public understanding of any privacy mechanisms associated with caller identification services. Accordingly, we amend our rules to require that carriers participating in the offering of services that deliver calling party number, including ANI or charge number, on interstate calls must notify their subscribers that their telephone numbers may be transmitted to a called party.[39] In addition, such carriers must inform their subscribers of the privacy mechanism available on interstate calls, and must explain how subscribers can activate the privacy mechanism. Even though the ability of the caller to activate a privacy flag is not yet ubiquitous on calls to ANI or charge number services subscribers, ANI or charge number services increasingly are offered through SS7 networks, and an education effort will be most effective if it anticipates the greater availability of a privacy flag. For ANI or charge number services for which such privacy is not provided, the notification must inform telephone customers of the restrictions on the reuse or sale of subscriber information. We specifically request further comment on whether we should prescribe detailed instructions regarding what form education should take or prescribe more precisely responsibilities of various carriers.[40] We are particularly interested in specific joint industry education proposals (*see* comments of IIA, *supra*, para. 54).

H. CPNI and Subscriber Privacy.

61. Privacy issues are also raised by telephone companies' use of customer proprietary network information, or CPNI.[41] The Commission's current CPNI rules govern the BOCs' use of CPNI in marketing enhanced services and CPE.[42] The CPNI rules are designed to balance considerations of customer privacy, efficiency, and competitive equity. In recent months, however, the communications industry has witnessed large local exchange carriers' planning and entering into alliances, acquisitions, and mergers with non-telephone company partners.[43] In this changing environment, access to CPNI among affiliated companies may heighten concerns. Thus, we will seek further comment from the public on whether the existing CPNI safeguards will adequately meet customers' reasonable privacy expectations in the future. The CPNI rules are currently under reconsideration in the Computer III Remand Proceeding, and the privacy concerns related to CPNI are more appropriately addressed in that proceeding. Therefore, we are releasing a public notice in CC Docket No. 90-623 seeking further comment, particularly on the issue of residential and small business customers' CPNI-related privacy concerns.

I. Wiretap Statutes and Caller ID.

62. In the NPRM, the Commission noted that some parties suggest that caller ID may violate the Federal Wiretap Act (Wiretap Act), 18 U.S.C. §§ 3121-3127 or the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2511.[44] Colorado DVC, DC OPC, NASUCA, and Ohio OCC reiterate this contention. Other commenters such as Allnet, (Bell Atlantic, Ameritech, and AT&T argue that caller ID is permissible under ECPA or the consent

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[35] The Commission's rules implementing the Telephone Consumer Protection Act of 1991 (TCPA) prohibit calls by a telephone solicitor to residential telephone subscribers who have asked that they receive no solicitation calls from that person or entity. We emphasize that these rules apply where the telephone numbers of residential subscribers are obtained via caller ID, ANI or charge number services. *See* Section 64.1200 of the Commission's rules.

[36] *See* Section 64.1602, Appendix C.L

[37] NPRM at para. 23.

[38] *Id.*

[39] *See* Section 64.1603, Appendix C.

[40] Pacific Bell has expressed concern in *ex parte* comments to Commission staff that subscriber education requirements imposed by the state of California as a condition to the introduction of intrastate calling party number based services, like caller ID, are so burdensome to preclude, as an economic matter, offering of caller ID services in California. The record in this proceeding is not sufficient to resolve this issue. Carriers may present issues of state regulation of interstate service to the Commission for consideration under the standards set forth in *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986). *See also* para. 70, *infra*.

[41] CPNI encompasses any information about customers' network services and their use of those services that a telephone company possesses by virtue of its provision of network services. *See* Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 215 (1988).

[42] *See Computer III* Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7605-14 (1991) (enhanced services CPNI rules); Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 152-153 (1987) (CPE CPNI rules). These rules do not apply to independent LECs.

[43] *See, e.g.*, BellSouth's agreement in principle to acquire an interest in Prime Management Co.; US West's $2.5 billion investment in Time Warner Entertainment Co.; and NYNEX's agreement to invest $1.2 billion in Viacom.

[44] NPRM at paras. 24-26.

provisions of the Wiretap Act as "trap and trace" devices. Pacific adds that caller ID is not the type of activity that Congress intended to include in ECPA. Pacific points out that trap and trace laws are designed to prevent surreptitious wiretaps by the police and other parties and caller ID is not such a wiretap because it is a tariffed service offered uniformly and publicly to all customers.

63. In accordance with its statement in the NPRM that it would solicit the views and analysis of the Department of Justice, the Commission's General Counsel requested the Department of Justice's opinion on the issue. In its reply memorandum, the Department of Justice (DOJ) concludes that the federal wiretap statutes embodied in the Federal Criminal Code do not pose a barrier to interstate caller ID service. We adopt the Department's analysis and conclusions on this issue, and are incorporating the Department's memorandum into this Report and Order. *See* Appendix D.

J. Relationship between Interstate and Intrastate Caller ID.

64. In the NPRM, the Commission sought comment on whether state policies concerning calling party number based services, including caller ID, negate or hinder the development of interstate caller ID, ANI, or both.[45] In analyzing whether interstate and intrastate models may coexist harmoniously both legally and technologically, the Commission did not propose to preempt any specific state regulation governing intrastate caller ID. Rather, we found that it is necessary to review existing state policies individually in order to determine whether preemption is necessary.[46] Many commenters, including AT&T, GTE, and MCI, propose that the Commission use its authority to preempt the states if state regulations impede interstate caller ID offerings. Pacific concurs that the Commission may preempt state regulation of caller ID because the service is not separable into interstate and intrastate portions and state regulation frustrates a valid federal policy.

65. Some commenters, including Ameritech, Sprint, Bell Atlantic, and BellSouth, contend that the terminating carrier should be required to honor any blocking indicators that are present on interstate calls on a per call basis. BellSouth proposes that the Commission should defer to each state's determination of blocking options available for calls originating in that state. Some commenters, including Colorado DVC, Connecticut, and Consumer Action, concur that the Commission should defer to state policies on blocking because state regulators are more attuned to local factors including history, culture, custom and legal environment. State commenters, including Indiana Utility Counşel, Illinois CC, and Missouri PSC, contend that preemption is unwarranted and untimely because states should be able to develop standards that provide more, but not less privacy protection to consumers. NARUC argues that preempting state caller ID policies is inappropriate from both a legal and policy perspective. NARUC proposes that the Commission devise a plan that carries out federal objectives but can substantially coexist with various state blocking plans. Some commenters concur with NARUC and contend that federal and state rules can coexist.

66. Many commenters, including AT&T and Pacific, contend that existing technology renders it infeasible for carriers to comply with one set of blocking requirements for intrastate and a different set of standards for interstate caller ID. Allnet, NTI, and Bell Atlantic contend that privacy standards should apply to intrastate, interstate and international communications and that different standards would require more complex equipment. Specifically, Bell Atlantic asserts that substantial development and expense over several years would be necessary to accommodate differing interstate and intrastate standards.

67. Nynex, USTA, and SNET contend that different state and federal policies on caller ID create caller confusion, and that a uniform national policy for caller ID would minimize consumer confusion. The California PUC proposes that the Commission, if it allows interstate caller ID, should not preempt more restrictive state privacy protections adopted for intrastate caller ID, and instead should defer to the more restrictive requirements in each of the states.

68. As is discussed in Section A, *supra*, interstate passage of calling party number serves the public interest by making it possible for telecommunications service providers to offer beneficial new communications services that directly and indirectly can increase the business sector's efficiency and residential customers' access to information and other services. In this proceeding we will require carriers having SS7 capability to transmit CPN to interconnecting carriers. Recognizing that there may be situations in which the calling party wishes to preserve privacy, we establish *67 (and 1167 for rotary or pulse-dialing phones) as the mechanism by which this may be done on interstate calls. Carriers must honor a caller's choice to use this blocking mechanism. These policies strike a reasonable balance among significant competing interests, including reasonable privacy expectations and economic growth. Our approach ensures that the privacy rights of the caller are not unreasonably infringed upon by the policies of the state where the call terminates (in those states offering unlimited caller ID a blocking request from another state might not otherwise be honored) nor are the concerns of the called party unreasonably infringed upon by the policies of the state where the call originates (unqualified, free per line blocking likely would significantly increase the number of blocked interstate calls).

69. We are sensitive to states' interests in protecting the privacy of their residents, but note that limited preemption of state regulations is necessary in some instances to ensure that our goal of facilitating the development of interstate calling party number based services is not frustrated by inconsistent state law, and that state decisions with respect to caller ID or other calling party number based services do not infringe upon the privacy interests of parties in other states.[47] Accordingly, we preempt state regulation of

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[45] NPRM at para. 34.

[46] *Id.* at para. 30.

[47] *See City of New York v. FCC*, 486 U.S. 57 (1984); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984). We conclude that the fact that the federal wiretap statutes do not, as a matter of federal criminal law policy, preempt states from adopting greater privacy protection measures, *see United States v. Capra*, 501 F.2d 267, 276 (2d Cir. 1974), *cert. denied*, 402 U.S. 990 (1975); S. Rep. No. 1097, 90th Cong., 2d Sess. 93 (1968), does not affect our authority to preempt as a matter of federal communications policy.

caller ID or other calling party number based services as follows: states may not prohibit automatic per call blocking for interstate calls, require a blocking alternative for interstate calls different from the one adopted in this proceeding, or prohibit the offering of interstate caller ID services. Thus, states may not prohibit carriers from offering interstate services based on calling party number, including caller ID service. States will not be able to require the use of digits other than *67 (or 1167 for rotary or pulse-dialing phones) for automatic per call blocking on interstate calls, nor require carriers offering or participating in the interstate transmission of calling party number to provide blocking systems that interfere with the use of *67 (or 1167 for rotary or pulse-dialing phones) to achieve blocking. Preemption is necessary in these cases to ensure that state regulations do not interfere with the achievement of important federal objectives, and with the Commission's exclusive jurisdiction over interstate communications.[48]

70. To the extent that inconsistent regulations cannot be accommodated simultaneously for interstate and intrastate caller ID services, some further preemption of state regulations may become necessary.[49] We will examine the need for such additional preemption on a case-by-case basis. For example, there may be cases in which state caller ID requirements applicable to intrastate calls would, as a practical matter, make it impossible for carriers to implement per call blocking for interstate calls. We are reluctant to preempt state authority over intrastate communications, and will endeavor to accommodate state regulations whenever possible. State policies, however, must not frustrate the paramount federal interest in a cohesive interstate communications policy, and must not be allowed to infringe unreasonably upon the privacy interests of the citizens of other states.

III. CONCLUSION

71. Our goal in this proceeding is to establish a federal policy to govern the passage of calling party number among carrier networks. In this order we find that a federal model for interstate delivery of calling party number is in the public interest, that the model must protect calling party privacy, and that certain state regulations of interstate caller ID must be preempted. Accordingly, we amend Part 64 of the rules to require that common carriers using Common Channel Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit CPN and its associated privacy indicator on interstate calls. We require that carriers offering CPN based services provide automatic per call blocking at no charge to interstate callers, and that the privacy indicator be honored by terminating carriers. We find that the costs of interstate transmission of CPN are *de minimis*, and that the CPN should be transmitted among carriers without additional charge. We require that carriers participating in the offering of any service that delivers CPN on interstate calls must inform telephone subscribers regarding the availability of identification services and how to invoke the privacy protection mechanism. We also seek comment on whether more specific subscriber education requirements should be imposed. We restrict the reuse or sale of telephone numbers by subscribers to automatic number identification (ANI) or charge number services. We note that additional comments are sought in the *Computer III* Remand Proceeding on whether residential and small business customers' privacy concerns warrant revision of the Commission's rules governing reuse and sale of customer proprietary network information (CPNI). Finally, we seek comment on extending the policies adopted herein to other services that might identify the calling party.

72. We expect the rules and policies adopted herein will support the efforts of carriers, standards setting bodies, states, CPE manufacturers, and others in providing CPN-dependent services in an efficient manner. In this federal model, we recognize the value and benefits to the public of interstate CPN services, we promote the transmission of the calling party number from the originating carrier to the terminating carrier, and we balance the reasonable privacy expectations of both the calling and the called party. The rules we adopt to govern services such as interstate caller ID service remove obstacles to their development posed by uncertainty and non-uniform state policies and should facilitate implementation of new and beneficial interstate services.

IV. PROCEDURAL MATTERS

73. *Ex Parte Rules - Non-Restricted Proceeding.* The Further Notice of Proposed Rulemaking is a nonrestricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

74. *Final Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601 *et seq.*, the following final analysis has been prepared:

I. Need for and objective of the rules:

This Report and Order adopts policies governing the transmission of the calling party number parameter and its associated privacy indicator on interstate calls. Several commenters to the NPRM in this proceeding have identified a number of potential uses for interstate calling party number based services, including caller ID, and have indicated that it also will improve certain existing communication service offerings. We find that the potential benefits of interstate passage of calling party number far exceed any negative effects. We thus adopt the conclusion reached in the NPRM that interstate caller ID and other calling party number based services are in the public interest and should be available to interstate subscribers nationwide pursuant to the policies and rules set forth in this order.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

[48] We note that the Department of Justice memorandum, which also addresses preemption issues, is consistent with our analysis of preemption. *See* Appendix D at 9-13.

[49] *See generally, Louisiana Public Service Comm'n v. FCC; NARUC v. FCC,* 880 F.2d 422 (D.C. Cir. 1989). *See also* para. 60, n. 38, *supra.*

III. Significant alternatives considered:

The NPRM in this proceeding requested comments on several proposals as well as the views of commenters on other possibilities. The Commission has considered all comments and has adopted regulations which require the passage of calling party number where SS7 is deployed, facilitate interstate calling party number based services, including caller ID, and implement federal policy on privacy.

75. *Initial Regulatory Flexibility Act Analysis on the Further Notice of Proposed Rulemaking*

An Initial Regulatory Flexibility Analysis is contained Appendix A to this Report and Order and Further Notice of Proposed Rulemaking.

76. *Comment Dates*

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before May 18, 1994 and reply comments on or before June 21, 1994. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting documents with the reference number "CC Docket 91-281" on each document. If interested parties want each Commissioner to receive a personal copy of comments, interested parties must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, DC. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857-3800.

V. ORDERING CLAUSES

77. Accordingly, It Is Ordered, that, pursuant to authority contained in Sections 1, 4(i), 4(j), 201-205 and 218, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218, Part 64 of the Commission's Rules and Regulations ARE AMENDED as set forth in Appendix C hereof, effective April 12, 1995.

78. It Is Further Ordered, that, pursuant to authority contained in Sections 1, 4(i), 4(j), 201-205 and 218, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218, Further NOTICE OF PROPOSED RULEMAKING is hereby provided as indicated above.

79. It Is Further Ordered, that, the Secretary shall cause a summary of this *Report and Order and Further Notice of Proposed Rulemaking* to be published in the Federal Register which shall include a statement describing how members of the public may obtain the complete text of this Commission decision. The Secretary shall also provide a copy of this *Report and Order Further Notice of Proposed Rulemaking* to each state utility commission.

80. For further information regarding this Report and Order and Further Notice of Proposed Rulemaking, contact Suzanne Hutchings, Common Carrier Bureau, Domestic Facilities Division, (202) 634-1802.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action

This rulemaking proceeding is initiated to obtain comment on whether the Commission should adopt rules providing for subscriber education on interstate calling party number delivery, and for the application of federal rules and policies for interstate calling party number delivery to interstate calling party name delivery.

Objectives

The Commission seeks to establish an environment in which interstate calling party number based services are made possible and advantages of a uniform regulatory framework are realized.

Legal Basis

The proposed action is authorized under Sections 1,4, 201-205, 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154, 201-205, 218.

Reporting, Recordkeeping and Other Compliance Requirements

This Further Notice seeks comment on whether more specific subscriber education requirements should be imposed on those offering calling party number based services, and on whether and how rules and policies on interstate delivery of calling party number should apply to interstate calling party name delivery services.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

Rule revisions in this proceeding could affect carrier's offering of interstate calling party name and number based services such as caller ID service. After evaluating the comments and reply comments in this proceeding, the Commission will examine further the impact of any rule changes on small entities, and will set forth its findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The FNPRM solicits comment on any significant alternatives minimizing the impact on small entities consistent with the stated objectives.

APPENDIX B

Commenters

AD HOC Telecommunications Users Committee (Ad Hoc Users) *

Aeronautical Radio, Inc. (ARINC) **

Alaska - Alaska Public Utilities Commission (Alaska PUC)

ALLNET (Allnet)

American Osteopathic Association (AOA) **

American Telephone & Telegraph (AT&T) *

Ameritech Operating Companies (Ameritech) *

Arizona Corporation Commission (Arizona CC) *

Baer, Joseph (Baer)

Bell Atlantic Telephone Companies (Bell Atlantic) *

BellSouth Corporation (BellSouth) *

Bliley, Representative Thomas Jr. et al. (Committee on Energy and Commerce)

California, Consumer Affairs of the State of (California Consumer Affairs) *

California Public Utilities Commission (California PUC) *

Central Telephone Company (Centel) *

Citicorp (Citicorp) **

Colorado Domestic Violence Coalition (Colorado DVC)

Colorado Office of Consumer Counsel (Colorado Consumer) *

Connecticut, Attorney General for the State of (Connecticut)

Consumer Action (Consumer Action) *

Consumer Federation of America (CFA)

Computer Professionals for Social Responsibility (CPSR) *

Direct Marketing Association (DMA) *

District of Columbia, Office of the People's Counsel (DC OPC)

Georgia Consumer's Utility Counsel (Georgia CUC)

GTE Service Corp. (GTE) *

Illinois Commerce Commission (Illinois CC)

Indiana Office Of Utility Consumer Counselor (Indiana Utility Counselor)

Indiana Utility Regulatory Commission (IURC)

Information Industry Association (IIA)

Iowa Office of Consumer Advocate (Iowa) *

Jackson, Ms. Patricia L. (Jackson)

Kentucky, Attorney General of the Commonwealth (Kentucky)

McCaw Cellular Communications (McCaw) *

Maryland People's Counsel (Maryland PC) *

Massachusetts, Office of the Attorney General (Massachusetts)

MCI Communications (MCI) *

Medical Society of New Jersey (MSNJ)

Metromedia (Metromedia)

Michigan Public Service Commission (Michigan PSC)

Missouri Office of the Public Counsel (Missouri Counsel)

Missouri Public Service Commission (Missouri PSC)

National Association of Regulatory Utility Commissioners (NARUC)*

National Association of State Utility Consumer Advocates (NASUCA)*

National Telephone Cooperative Association (NTCA) (National

Telecommunications and Information Administration (NTIA)**

New York City, Department of Telecommunications & Energy (NYC Telecom)

New York, Public Utility Law Project, Inc. (NY Law Project)

New York State Consumer Protector Board (NYS Consumer)

New York State Department of Law (NYS Law) *

New York State Department of Public Service (NYS PSC) *

North Carolina, Attorney General (North Carolina)

Northern Telecom Inc. (NTI) *

NYNEX Telephone Companies (Nynex) *

Ohio, Office of the Consumer's Counsel (Ohio OCC) *

Ohio State University (Ohio State University) **

Pacific Bell and Nevada Bell (Pacific) *

Pennsylvania Public Utility Commission (Pennsylvania PUC)

Pilgrim Telephone (Pilgrim)

Project Designed Systems (PDS) **

Rochester Telephone Corporation (Rochester)

Southern New England Telephone Company (SNET)

Southwestern Bell Telephone Company (SWB) *

Sprint Corporation (Sprint) **

Telocator (Telocator)

Texas Office of Public Utility Counsel(Texas PUC)

Texas, State of (Texas)

United States Coast Guard (USCG)

United States Telephone Association (USTA) **

United Telecommunications Inc. (United)

US West (US West) **

Virginia State Corporation Commission (Virginia CC)

Washington Utilities And Transportation Commission (Washington UTC)

Yellow Pages Publishers Association (YPPA)

Numerous letters from individuals were also received. All comments and letters were considered.

* also filed reply comments

** filed only reply comments

APPENDIX C

Part 64 of the Commission's Rules and Regulations (chapter 1 of Title 47 of the Code of Federal Regulations, part 64) is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201-4, 218, 225, 226, 227 unless otherwise noted.

2. The table of contents for Part 64 is amended by adding subpart P to read as follows:

Subpart P - Calling Party Telephone Number. Privacy.

§ 64.1600 Definitions

§ 64.1601 Delivery Requirements, and Privacy Restrictions

§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

§ 64.1603 Customer notification.

§ 64.1604 Effective date.

3. Subpart P of Part 64 is added to read as follows:

§ 64.1600 Definitions.

(a) Aggregate Information. The term 'aggregate information' means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) ANI. The term 'ANI' (automatic number identification) refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) Calling Party Number. The term Calling Party Number refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signalling System 7 network.

(d) Charge Number. The term "charge number" refers to the delivery of the calling party's billing number in a Signalling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) Privacy Indicator. The term Privacy Indicator refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on an Signalling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) Signalling System 7. The term Signalling System 7 (SS7) refers to a carrier to carrier out-of-band signalling network used for call routing, billing and management.

§ 64.1601 Delivery Requirements and Privacy Restrictions

(a) Delivery. Common carriers using Signalling System 7 and offering or subscribing to any service based on Signalling System 7 functionality are required to transmit the calling party number associated with an interstate call to interconnecting carriers.

(b) Privacy. Originating carriers using Signalling System 7 and offering or subscribing to any service based on Signalling System 7 functionality will only recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse-dialing phones) as a caller's request for privacy on an interstate call. No common carrier subscribing to or offering any service that delivers calling party number may override the privacy indicator associated with an interstate call. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) Charges. No common carrier subscribing to or offering any service that delivers calling party number may (i) impose on the calling party charges associated with per call blocking of the calling party's telephone number, or (ii) impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) Exemptions. §64.1601 shall not apply to calling party number delivery services (i) used solely in connection with calls within the same limited system, including (but not limited to) a Centrex, virtual private network, or private branch exchange system; (ii) used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line; or (iii) provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

(a) Any common carrier providing Automatic Number Identification or charge number services on interstate calls to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subpart. Such requirements shall:

(1) permit such person to use the telephone number and billing information for billing and collection, routing, screening, and completion of the originating

telephone subscriber's call or transaction, or for services directly related to the originating telephone subscriber's call or transaction;

(2) prohibit such person from reusing or selling the telephone number or billing information without first (A) notifying the originating telephone subscriber and (B) obtaining the affirmative consent of such subscriber for such reuse or sale; and

(3) prohibit such person from disclosing, except as permitted by subparagraphs (1) and (2), any information derived from the automatic number identification or charge number service for any purpose other than (i) performing the services or transactions that are the subject of the originating telephone subscriber's call, (ii) ensuring network performance security, and the effectiveness of call delivery, (iii) compiling, using, and disclosing aggregate information, and (iv) complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) shall not prevent a person to whom automatic number identification or charge number services are provided from using (1) the telephone number and billing information provided pursuant to such service, and (2) any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 C.F.R. §§ 64.1200 and 64.1504(c).

§ 64.1603 Customer notification. Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than April 12, 1995, and at such times thereafter as to ensure notice to subscribers. The notification shall inform subscribers how to maintain privacy by dialing *67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

§ 64.1604 Effective Date

The provisions of Sections 64.1601 through 64.1603 shall be effective as of April 12, 1995.

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: Rules and Polices Regarding Calling Number Identification Service -- Caller ID (CC Docket No. 91-281)

In this Report and Order, the Commission finds that a federal model for interstate delivery of a calling party number(CPN) is in the public interest, that calling party privacy must be protected, and that certain state regulation of interstate caller ID must be preempted. Accordingly, the Commission amends its rules to require that: (1) common carriers using Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit the CPN and its associated privacy indicator on an interstate call to connecting carriers; (2) carriers offering CPN delivery services provide, at no charge to the caller, and automatic per-call blocking mechanism, *67, for interstate callers; (3) terminating carriers providing CPN delivery services, including caller ID, must honor the *67 privacy indicator; and (4) carriers participating in services that deliver CPN on interstate calls must inform telephone subscribers that the CPN may be revealed to called parties and educate customers about how to obtain privacy. The Commission also adopts rules to address privacy concerns raised by the reuse or sale of information generated by automatic number identification (ANI), and seeks additional comment on whether the privacy concerns by residential and small business customers warrant revising the Commission's rules governing the reuse and sale of customer proprietary network information (CPNI). Finally, the Commission adopts a Further Notice of Proposed Rulemaking to solicit comment on (1) whether the Commission should prescribe more precise educational requirements, and (2) whether and how the policies adopted on caller ID should be extended to other identification services, such as caller party name or CPNI.

I support this action because I believe that it balances the primary public policy considerations in this proceeding regarding how to facilitate the interstate transmission of CPN through services including caller ID while offering individuals an opportunity to protect their privacy. I write separately on this issue to underscore that the Commission must monitor the extent that the implementation of these rules effectively mitigates the confusion created by the varying state practices regarding the transmission of CPN and associated blocking procedures for intrastate calls. Admittedly, the Commission's actions will not explicitly preempt states on intrastate practices, but I am concerned that the combination of the federal policy for interstate calls and various intrastate practices may require some education for consumers. Accordingly, I believe that the Further Notice is an appropriate step toward prescribing more precise educational requirements, if necessary.

I also am interested in how states will resolve situations where: (1) states currently lack privacy capability, and will have to provide some equipment; and (2) states currently use per-line blocking for intrastate calls and will have to accommodate *67 blocking capability. I believe that the federal policy adopted today by the Commission is a minimally intrusive measure given the variety of state practices, and may manage the level of confusion for consumers most effectively compared to alternative approaches. Nonetheless, I will be interested in reviewing the practical effect of these rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-571

In the Matter of

Telecommunications Relay Services,
and the Americans with Disabilities
Act of 1990

ORDER

Adopted: April 1, 1994; Released: April 5, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On January 28, 1994, pursuant to Section 64.604 (c)(4)(iii) of the Commission's Rules, 47 C.F.R. § 64.604, the Telecommunications Relay Services (TRS) Interim Fund Administrator, the National Exchange Carrier Association, Inc. (NECA) filed its estimates for the TRS Fund requirements for the period April 1994 through March 1995.[1] The NECA filing was unopposed. Based on NECA's estimates, the Commission has calculated the contribution factor for the period April 26, 1994 through March 25, 1995. This Order adopts both the contribution factor for that period as well as the 1994 TRS Fund Worksheet, FCC Form 431.[2]

II. BACKGROUND

2. The Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that interstate and intrastate telecommunications relay services[3] are available, to the extent possible and in the most efficient manner to individuals in the United States with hearing and speech disabilities. In fulfillment of this mandate, the Commission initiated a rulemaking proceeding in November 1990.[4] After considering extensive public comments, and the specific requirements of Title IV of the ADA,[5] the Commission adopted a Report and Order (*TRS Order*) in July 1991.[6] In the *TRS Order*, the Commission fashioned a comprehensive set of rules which prescribed operational, technical, and functional minimum standards required of all TRS providers, and delineated the state certification process. Subsequently, in an Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking (*TRS II*),[7] the Commission adopted a shared-funding mechanism to recover the costs of providing interstate TRS, and proposed a specific plan establishing an interstate TRS fund. The shared-funding mechanism requires providers of interstate telecommunications services to contribute to a fund that reimburses TRS providers for the cost of interstate TRS. On July 20, 1993, the Commission adopted a Third Report and Order (*TRS III*) which adopted rules implementing the TRS Fund.[8] On September 28, 1993, the Commission adopted a Second Order on Reconsideration and Fourth Report and Order (*TRS IV*) which approved the payment formula, fund size, and payment schedule for the TRS Fund.[9]

III. DISCUSSION

3. Section 64.604(c)(4)(iii) of the Commission's Rules, 47 C.F.R. § 64.604 (c)(4)(iii), requires the TRS Fund administrator to file annually with the Commission estimated TRS fund requirements for the next 12-month period. Based on these estimates, the Commission calculates the contribution factor and prepares the annual TRS Fund Worksheet, FCC Form 431. In *TRS III*, the Commission adopted a TRS contribution factor of .00047 percent of 1992 interstate gross revenues for the contribution period of July 26, 1993 through April 26, 1994.

4. NECA submitted with its January 28 filing the results of TRS Fund activity for the period July 1993 through March 1994, and presented its anticipated fund activity for the period from April 1994 through March 1995. Specifically, NECA reported that 2,563 common carriers filed FCC Form 431 during the initial 1993-94 contribution period. NECA estimated that it will collect from these carriers $32.1 million for the initial contribution period and will earn an additional $133,454 in interest income. TRS Fund expenses for this period are expected to amount to $18.7 million, including payment obligations of approximately $15.5 million, NECA administrative expenses totalling $735,534, and a cash flow allowance of $3.122 million.[10] NECA estimates a carryover of $12.999 million from the 1993 filing year. For the April 1994 through March 1995 period, NECA estimates projected TRS outlays

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[1] *See* Public Notice, No. 41578 (February 2, 1994).

[2] *See* Appendix A.

[3] Telecommunications relay services (TRS) permit persons with hearing and speech disabilities to communicate by telephone with persons who do not have such disabilities. TRS facilities are equipped with specialized equipment and staffed by communications assistants (CAs) who relay conversations between people who use text telephones and people who use traditional telephones.

[4] *See* Notice of Proposed Rulemaking, CC Docket No. 90-571, 55 Fed. Reg. 50037 (Dec. 4, 1990); 5 FCC Rcd 7187 (1990).

[5] *See* S.933, Pub. L. 101-336, 104 Stat. 327, 366-69 (July 26, 1990).

[6] Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991) (*TRS Order*).

[7] Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (February 25, 1993), (*TRS II*).

[8] Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993) (*TRS III*).

[9] *See* Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Second Order on Reconsideration and Fourth Report and Order, FCC 93-463 (September 28, 1993) (*TRS IV*).

[10] *See* NECA filing at Attachment C.

of $31.260 million and concludes that the TRS Fund will require additional contributions of $18.261 million for this period.[11]

5. *Decision.* The Bureau has reviewed the NECA filing and analyzed the data therein. Pursuant to Section 64.604(c)(4)(iii) of the Commission's rules, we set the April 1994 through March 1995 contribution factor at .00030 per cent of annual gross interstate revenues and adopt the 1994 TRS Fund Worksheet, FCC Form 431 attached as Appendix A. This factor is based on the projected funding base for 1993 gross interstate revenues of $70.3 billion, 1994 projected TRS payments of $31.260 million, 1993 carryover of $12.999 million, a safety margin of 10 per cent, with a net 1994 funding requirement of $21.387 million.[12]

IV. CONCLUSION

6. For the reasons set forth above, the Bureau concludes that the TRS Fund payment formula and fund size will reasonably compensate providers of TRS. We further conclude that the TRS Fund will further the goal of the ADA to provide functionally equivalent telecommunications services for all Americans.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, that the TRS Fund contribution factor for the period April 26, 1994 through March 26, 1995 shall be .00030 percent of annual gross interstate revenues.

8. IT IS FURTHER ORDERED, that the 1994 TRS Fund Worksheet is hereby adopted and will be published in the Federal Register.

9. IT IS FURTHER ORDERED, that the Secretary shall provide a copy of this Order to each state utility commission and to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief,
Common Carrier Bureau

[11] *See* NECA filing at Attachment D.
[12] *See* Appendix B.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 16, 1994

NON-VOICE, NON-GEOSTATIONARY MOBILE-SATELLITE SERVICE PETITION FOR EXPEDITED DECLARATORY RULING

Comment Date: April 1, 1994
Reply Date: April 8, 1994

STARSYS Global Positioning, Inc. File No. 16-DSS-MISC-94

STARSYS Global Positioning, Inc. (STARSYS) requests a declaratory ruling that it is qualified under Section 310 of the Communications Act of 1934, as amended, to be a non-common carrier radio station licensee. STARSYS requests that this request be dealt with in an expeditied manner in order to dispel any uncertainty surrounding its legal qualifications, and thus to allow the company to proceed with the financing of its system.

STARSYS is a Delaware corporation. Under its Articles of Incorporation, its Class A shareholder, which holds a 5% equity interest in the company, must elect three of the company's five directors. STARSYS's Class B shareholder, which holds the remaining 95% equity interest in the company, may elect the remaining two directors.

STARSYS's Class A shares are owned by Hughes STX Corporation, a wholly-owned subsidiary of Hughes Aircraft Company. Its Class B shares are held by NACLS, a Delaware corporation, which in turn is wholly owned by STARGOS S.A. 50.7% of STARGOS S.A. is owned by a number of private companies that are not affiliated with any foreign governments or representatives thereof. The remaining 49.3% of STARGOS S.A.'s stock is owned by Collecte Localisation Satellites ("CLS"), a French company. CLS is in turn owned 55% by Centre National d' Etudes Spatiales (the French space agency), 15% by INFREMER (the French institute for Research of the Sea) and 30% by French banks.

Comments or oppositions to STARSYS's request for declaratory ruling must be filed by April 1, 1994, and replies are due by April 8, 1994.

For further information, contact Kristi Kendall at (202) 634-7058, 2025 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-85

In the Matter of

Amendment of Part 97 of the	RM-7649	RM-7669
Commission's Rules Concerning	RM-7675	RM-7676
Message Forwarding Systems in	RM-7681	RM-7904
the Amateur Service.		

REPORT AND ORDER

Adopted: March 30, 1994; Released: April 13, 1994

By the Commission:

I. INTRODUCTION

1. On March 18, 1993, we adopted a *Notice of Proposed Rule Making* (*Notice*)[1] in the above-captioned proceeding. In the *Notice,* we proposed to relax the amateur service rules to enable contemporary message forwarding systems to operate at high speed while retaining safeguards to prevent misuse.[2] This *Report and Order* adopts the rules substantially as proposed and incorporates several minor modifications suggested in the comments.

II. DISCUSSION

2. Message forwarding systems have been a mainstream operating activity since the inception of the amateur service early in this century.[3] The development of digital technology now makes high volume, high speed communications systems practical. This development has resulted in thousands of amateur operators voluntarily linking their individually-licensed very-high frequency (VHF)[4] stations together to form easily-accessible *ad hoc* message forwarding systems.[5] Currently, the control operator of each station is held individually accountable for each message retransmitted. This introduces unnecessary message content review and resultant system delays. The objective of this proceeding, therefore, is to ascertain the accommodations that should be provided for amateur stations operated in contemporary high speed message forwarding systems to eliminate unnecessary oversight procedures. There were forty-two comments and two reply comments filed in response to the *Notice.*

3. The potential for transmitting a high volume of messages cannot be achieved because Section 97.103(a) of the Commission's Rules, 47 C.F.R. § 97.103(a), holds each station licensee and control operator accountable for the proper operation of the station. This requires, in effect, the control operator of every forwarding station to review each message for improper content prior to its retransmission.[6] The proposed new rule section provided that the control operators of intermediate forwarding stations, other than the first forwarding station, would not be held accountable when their stations retransmitted improper communications inadvertently.[7] This approach would facilitate high speed message forwarding yet retain a degree of protection against abuse. We also proposed to restate the definition of the term "repeater" in Section 97.3 of the Commission's Rules, 47 C.F.R. § 97.3, so as to preclude any confusion with the accommodations proposed for message forwarding systems.

4. The commenters generally support our approach. They agree with relieving the control operators of intermediate forwarding stations of the need to review every message.[8] Our proposal to retain the requirement for the control operator of the first forwarding station to be accountable for retransmitting improper communications, however, drew a mixed response. The American Radio Relay League, Inc., (League) states that the obligation of the control operator of the first forwarding station should be the establishment of the identity of the station originating the message. Only when this is not done should these control operators be held accountable for improper message content.[9] Comments from some amateur operators, however, do not deem it necessary to hold any control operator of a forwarding station accountable for improper

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[1] 8 FCC Rcd 2202 (1993).

[2] *See Notice* at para. 2.

[3] A message forwarding system is a group of amateur stations participating in a voluntary, cooperative, interactive arrangement where communications from the control operator of an originating station are transmitted to one or more destination stations via forwarding stations, which may or may not be automatically controlled.

[4] The amateur service VHF bands are the 6 meter (50-54 MHz), 2 meter (144-146 MHz), and 1.25 meter (222-225 MHz) bands. *See* Section 97.301(a) of the Commission's Rules, 47 C.F.R. § 97.301(a). Currently, the 2 meter band is the most popular band for digital message forwarding systems. The propagation characteristic of the 2 meter band generally is line-of-sight. *Ad hoc* systems comprised of thousands of VHF stations, however, blanket the United States and beyond.

[5] The American Radio Relay League, Inc. *AX.25 Amateur Packet-Radio Link-Layer Protocol, Version 2.0, October 1984,* for example, is operated in systems at rates that produce a communication capability of several hundred characters per second.

[6] Improper communications are communications prohibited by Section 97.113 of the Commission's Rules, 47 C.F.R. § 97.113. This section recently has been revised to lessen restrictions on communications that amateur stations may transmit. *See Report and Order,* PR Docket No. 92-136, 8 FCC Rcd 5072 (1993).

[7] Although control operators of forwarding stations other than the first forwarding station would no longer have to screen each message, they would be responsible for discontinuing communications that violate the rules once they become aware of their presence.

[8] *See,* for example, comments of Gary R. Mitchell at 1, Lee S. Parr at 2.

[9] Reply comments of the League at 4.

communications.[10] Another commenter recommends that the message format be regulated to assist in the identification of the originating station.[11]

5. There is no central supervisory authority in an *ad hoc* amateur service digital network. The vulnerability of an unsupervised system can make it an easy target for misuse by uncooperative operators and non-licensees. It can be difficult, moreover, to establish after the fact that a particular VHF station originated a fleeting high speed digital transmission. For these reasons, there must be on-going oversight of the system. The control operators of the first forwarding stations are in the best position to provide such oversight. They are the stations that accept, on behalf of the system, messages from originating stations.[12] We will, therefore, accept the League's recommendation. We are amending the rules substantially as proposed to hold accountable only the licensee of the station originating a message and the license of the first station forwarding a message in a high speed message forwarding system. The licensee of the first forwarding station must either authenticate the identity of the station from which it accepts communications on behalf of the system, *or* accept accountability for the content of the message.[13] The matter of message format, however, will be left with the designers of the systems. Since we believe our modification to the rule is sufficient to insure accountability for violative communications, we see no need to specify any particular message format. The League also requests that we clarify which station in a message forwarding system is the first forwarding station.[14] The answer is that it is the station that receives a communication directly from the originating station and introduces it into the message forwarding system.

6. The comments also agree generally that the accommodations for message forwarding systems should not apply to other operating activities such as repeaters and auxiliary stations.[15] The League and the Colorado Council of Amateur Radio Clubs (CCARC), among others, suggest that we substitute the word "simultaneously" for "instantaneously" in the redefinition of a repeater.[16] We concur with the comments and will adopt these modifications.

7. In summary, we have decided to amend the amateur service rules to accommodate message forwarding systems. We believe these rule changes will enable contemporary high speed message forwarding systems to operate as their designers intended, while retaining the minimum safeguards necessary to prevent misuse.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that effective **June 1, 1994**, Part 97 of the Commission's Rules, 47 C.F.R. Part 97, IS AMENDED as set forth below. Authority for this action is found in Sections 4(f)(4)(A), (B), and (J), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(f)(4)(A), (B),and (J), 154(i), and 303(r).

9. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

10. For further information, contact William T. Cross, Personal Radio Branch, (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 97-Amateur Radio Service

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.3 is amended by redesignating paragraphs (a)(28) through (a)(44) as paragraphs (a)(29) through (a)(45), respectively, adding a new paragraph (a)(28), and revising paragraph (a)(7) and redesignated paragraph (a)(36) to read as follows:

§ 97.3 Definitions.

(a) ***

(7) *Auxiliary station.* An amateur station, other than in a message forwarding system, that is transmitting communications point-to-point within a system of cooperating amateur stations.

* * * * *

(28) *Message forwarding system.* A group of amateur stations participating in a voluntary, cooperative, interactive arrangement where communications are sent from the con-

[10] *See,* for example, comment of Charles L. Furlong at 1, James L. Reese at 1, Colorado Council of Amateur Radio Clubs at 1.

[11] Comments of Alfred T. Yeager II at 1.

[12] The American Radio Relay League Inc. *AX.25 Amateur Packet-Radio Link-Layer Protocol, Version 2.0, October 1984,* for example, incorporates provisions to record the trail of message forwarding stations for each message communicated.

[13] We note that originator authentication techniques in the amateur service are under discussion. See, for example, Jon Bloom, *Empirically Speaking,* QEX ARRL Experimenter's Exchange 2 (November, 1993).

[14] Comments of the League at 15.

[15] *See,* for example, comments of Jay O Brien at 1.

[16] Comments of the League at 16, Colorado Council of Amateur Radio Clubs at 3.

trol operator of an originating station to the control operator of one or more destination stations by one or more forwarding stations.

* * * * *

(36) *Repeater.* An amateur station that simultaneously retransmits the transmission of another amateur station on a different channel or channels.

* * * * *

3. Section 97.109(e) is revised to read as follows:

§ 97.109 Station control.

* * * * *

(e) No station may be automatically controlled while transmitting third party communications, except a station participating as a forwarding station in a message forwarding system.

4. Section 97.205 is amended by adding new paragraph (g) to read as follows:

§ 97.205 Repeater station.

* * * * *

(g) The control operator of a repeater that retransmits inadvertently communications that violate the rules in this Part is not accountable for the violative communications.

5. Section 97.216 is redesignated as Section 97.217.

6. Section 97.219 is added to read as follows:

§ 97.219 Message forwarding system.

(a) Any amateur station may participate in a message forwarding system, subject to the privileges of the class of operator license held.

(b) For stations participating in a message forwarding system, the control operator of the station originating a message is primarily accountable for any violation of the rules in this Part contained in the message.

(c) Except as noted in paragraph (d) of this section, for stations participating in a message forwarding system, the control operators of forwarding stations that retransmit inadvertently communications that violate the rules in this Part are not accountable for the violative communications. They are, however, responsible for discontinuing such communications once they become aware of their presence.

(d) For stations participating in a message forwarding system, the control operator of the first forwarding station must:

(1) Authenticate the identity of the station from which it accepts communications on behalf of the system; or

(2) Accept accountability for any violation of the rules in this Part contained in messages it retransmits to the system.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Magazine Telephone Company

Southern Kansas
Telephone Company

Petitions for Waiver
of Section 69.3(f) of
the Commission's Rules

ORDER

Adopted: March 31, 1994; Released: April 1, 1994

By the Acting Chief, Common Carrier Bureau:

1. The captioned petitioners (petitioners)[1] each request waiver of Section 69.3(f) of the Commission's Rules, 47 C.F.R. § 69.3(f). That section provides that small telephone companies may file their own access tariffs, pursuant to Section 61.39 of the Rules, 47 C.F.R. § 61.39, for a biennial period to be effective on July 1 of any odd-numbered year. Petitioners request waiver of Section 69.3(f) in order to file their own access tariffs for only a one-year period with a July 1, 1994 effective date.

2. Petitioners state that they wish to withdraw from the National Exchange Carrier Association, Inc. (NECA) traffic sensitive (TS) pool pursuant to the Commission's tariff filing requirements for small telephone companies. Petitioners argue that waiver of Section 69.3(f) is justified because it would enable them to realize the benefits of separately filing their own interstate access tariffs without incurring the indirect administrative and regulatory costs associated with participating in NECA's TS pool.[2] In support of their argument, petitioners rely on language in the *Small Telco Order* in which the Commission concluded, in adopting Section 69.3(f), that small carriers could "file tariffs every other year or more frequently if they so choose."[3] They contend that filing streamlined access tariffs under Section 61.39 and withdrawing from the NECA TS pool a year earlier than provided by the rules will produce cost savings which "could then be passed on to rate payers sooner."[4] No comments or oppositions were filed in response to these petitions for waiver.

3. In general, waiver of a rule is justified if application of the rule would frustrate its underlying purpose, or if grant of a waiver is otherwise in the public interest.[5] The purpose of the streamlined tariffing requirements for small telephone companies established in Section 61.39 is to reduce regulation for such carriers by allowing them to set their access rates based on historical costs, which are easier to compute and evaluate than rates based on projections of future costs and demand.[6] In adopting the Section 69.3(f) biennial period for the filing of Section 61.39 access tariffs by small telephone companies in odd-numbered years, the Commission explained that:

> Changes in costs and demand which affect the reasonableness of the filed rates are likely to increase over time and use of a two-year period . . . seems to strike a reasonable balance in correcting the rates while reducing the filing burdens.[7]

The Commission further determined that a period of more than two years between filings could allow small telephone companies to charge excessive rates and would "violate the rate neutrality principle."[8] As petitioners correctly point out, however, the Commission did not forbid small telephone companies from filing access tariffs "more frequently if they so choose."[9] On the contrary, the Commission found that filing access tariffs more often than every two years would not pose any risk of carriers' charging excessive rates.[10]

4. Accordingly, the Bureau concludes that strict adherence to the Section 69.3(f) biennial filing period, which would require petitioners to wait until next year to file their access tariffs, would frustrate an underlying purpose of Sections 69.3(f) and 61.39 of affording small telephone companies with a streamlined and flexible tariffing process. Accordingly, we find that grant of waivers of Section 69.3(f) to petitioners is warranted. Magazine and Southern Kansas should file their access tariffs on or before April 1, 1994 in order for them to become effective on July 1, 1994 for a period of one year.[11]

5. We note that the Commission has required that costs relating to general support facilities (GSF) be reallocated from non-common line categories to the common line category.[12] Thus, petitioners should be prepared to submit cost showings, including changes to GSF, upon reasonable request by the Commission or interested parties, pursuant to Section 61.39(b) of the Rules, 47 C.F.R. § 61.39(b).

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[1] Magazine Telephone Company (Magazine) Petition for Waiver (filed Dec. 29, 1993); Southern Kansas Telephone Company (Southern Kansas) Petition for Waiver (filed Feb. 3, 1994).

[2] Magazine Petition at 7; Southern Kansas Petition at 7.

[3] Magazine Petition at 4; Southern Kansas Petition at 4, *quoting* Regulation of Small Telephone Companies, 2 FCC Rcd, 3811, 3814 (1987) (*Small Telco Order*).

[4] Magazine Petition at 7 n.23; Southern Kansas Petition at 7 n.24, *citing* Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, CC Docket No. 92-135, 8 FCC Rcd 4545, 4559 (1993).

[5] *See* Northeast Cellular Telephone Co. v. FCC , 897 F.2d 1164 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[6] *Small Telco Order*, 2 FCC Rcd at 3812.

[7] *Small Telco Order*, 2 FCC Rcd at 3814.

[8] *Id.*.

[9] *Id.*.

[10] *Id.*

[11] *See, e.g.* OPASTCO Petition for Waiver of Section 69.3(f) of the Commission's Rules, 4 FCC Rcd 2319 (1988).

[12] *See* Section 69.307(b) of the Commission's Rules, 47 C.F.R. § 69.307(b); Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order, 8 FCC Rcd 3697 (1993).

6. We also address whether petitioners have satisfied the notice requirement set forth in Section 69.3(e)(6) of the Rules, 47 C.F.R. § 69.3(e)(6), which requires that a carrier notify NECA no later than December 31 of the preceding year that it will withdraw from a NECA pool. Under this rule, petitioners were required to notify NECA no later than December 31, 1993. Petitioners state that they have timely notified NECA of their intention to exit the pool.[13] Therefore, petitioners have satisfied the Section 69.3(e)(6) notice requirement.

7. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 4(i), and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, the petitions of Magazine Telephone Company and Southern Kansas Telephone Company for waiver of Section 69.3(f) of the Commission's Rules, 47 C.F.R. § 69.3(f), ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief,
Common Carrier Bureau

[13] Magazine Petition at 2; Southern Kansas Petition at 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-94-079

Application for authority to make available facilities in the Transcaribbean Cable System.

ORDER AND AUTHORIZATION

Adopted: March 7, 1994; Released: April 13, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that grant of the application is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-079 IS GRANTED, and American Telephone and Telegraph Company (AT&T) is authorized to:

a. make available to St. Thomas and San Juan Telephone Company (STSJ), on an Indefeasible Right of User (IRU) basis, half-interests in 8 Minimum Assignable Units of Ownership (MAUOs) in Subsegments G1 and G2 of TCS-1;

b. make available to Compania Anonima Nacional Telefonos de Venezuela, on an IRU basis, half-interests in 30 MAUOs in Subsegments G1 and G2 and 90 MAUOs in Subsegments G1 and G4 of TCS-1;

c. make available to TRT/FTC, on an IRU basis, half-interests in 30 MAUOs in Subsegments G1 and G4 of TCS-1;

d. make available to MCI International, Inc., on an IRU basis, half-interests in 30 MAUOs in Subsegments G1, G2 and G3 and 180 MAUOs in Subsegments G1 and G4 of TCS-1;

e. make available to Telefonica de Expana, on an IRU basis, half interests in 60 MAUOs in Subsegments G1 and G4 of TCS-1;

f. make available to Telefonos de Mexico S.A., on an IRU basis, half-interests in 90 MAUOs in Subsegments G1 and G4 of TCS-1;

g. make available to KDD of Japan, on an IRU basis, half-interests in 30 MAUOs in Subsegments G1 and G4 of TCS-1;

h. make available to Teleglobe Canada, on an IRU basis, half-interests in 30 MAUOs in Subsegments G1 and G4 of TCS-1;

i. make available to Italcable, on an IRU basis, half-interests in 60 MAOUs in Subsegments G1 and G4 of TCS-1;

j. make available to Cable and Wireless plc., on an IRU basis, half-interests in 3 MAUOs in Subsegments G1 and G2 of TCS-1;

k. make available to Compania Dominicana de Telefonos of the Dominican Republic (Codetel), on an IRU basis, half-interests in 38 MAUOs in Subsegments G1 and G2 of TCS-1;

l. make available to STSJ and Codetel, on an IRU basis, whole interests in 4 MAUOs in Subsegments G1 and G2 of TCS-1; and

m. make available to STSJ and All America Cables and Radio, Inc. of the Dominican Republic, on an IRU basis, whole interests in 24 MAUOs in Subsegments G1 and G2 of TCS-1.

3. Nothing in this order shall be construed as superseding any of the conditions set forth in any previous Commission Order dealing with the TCS-1 cable system.

4. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of this Order's public notice date (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Denver and Ephrata Telephone and Telegraph Company

Lexington Telephone Company

Mankato Citizens
Telephone Company

Mid-Communications, Inc.

Ogden Telephone Company

Petitions for Waiver
of Section 69.3(f) of
the Commission's Rules

ORDER

Adopted: March 31, 1994; Released: April 1, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The captioned petitioners (petitioners) each request waiver of Section 69.3(f) of the Commission's Rules, 47 C.F.R. § 69.3(f).[1] That section provides that small telephone companies may file access tariffs, pursuant to Section 61.39 of the Rules, 47 C.F.R. § 61.39, for a biennial period to be effective on July 1 of any odd-numbered year. Petitioners request waiver of Section 69.3(f) in order to file their own access tariffs for a one-year period with a July 1, 1994 effective date.

II. SUMMARY OF PLEADINGS

2. Petitioners all state that they wish to withdraw from the National Exchange Carrier Association, Inc. (NECA) traffic sensitive (TS) pool, effective July 1, 1994. Ogden, in addition, proposes to withdraw from the NECA common line (CL) pool.[2] Petitioners contend that waiver of Section 69.3(f) to allow them to file access tariffs effective July 1, 1994 instead of July 1, 1995 is in the public interest because the TS rates filed under the streamlined tariffing procedures of Section 61.39 will be lower than the current NECA pooling rates.[3] Petitioners maintain that filing their access tariffs with the earlier effective date will reduce rates they offer to interexchange carriers for switching services and facilities, while encouraging competition and customer choice.[4]

3. AT&T is the only party that filed comments in response to these petitions for waiver. While it does not object to petitioners' proposals in general, AT&T says that it is concerned that the petitions for waiver do not demonstrate whether petitioners have adjusted their revenue requirements to reflect the reallocation of costs from the TS category to the CL category for general support facilities (GSF), as required by Section 69.307 of the Rules, 47 C.F.R. § 69.307.[5] AT&T maintains that, because the changes to Section 69.307 required by the *GSF Order* result in a decrease in the costs associated with TS rate elements and a simultaneous increase in costs assigned to the CL rate element, petitioners may unjustly benefit from a "double recovery" by withdrawing from the NECA TS pool.[6] AT&T concludes that the Commission should require petitioners to submit new cost studies demonstrating that their rates reflect the GSF allocation change prescribed by the *GSF Order* in order to prevent a double recovery.[7]

4. None of the petitioners except Ogden filed a reply to AT&T's comments. Ogden contends in its reply that AT&T's argument stems from the concern that companies using an average schedule settlement process would receive a double recovery of GSF costs. Ogden contends that AT&T's concerns are misplaced because Ogden is a cost-based carrier, not an average schedule carrier, and has submitted quarterly costs studies to NECA for the historic period that will serve as the basis for its July 1, 1994 access rates.[8] Ogden further asserts that it does not intend to remain in either the NECA TS or CL pools.[9]

III. DISCUSSION

5. A waiver is justified if application of a rule would frustrate its underlying purpose, or if grant of a waiver is otherwise in the public interest.[10] The purpose of the streamlined tariffing requirements for small telephone companies established in Section 61.39 is to reduce regulation for such carriers by allowing them to set their access rates based on historical costs, which are easier to compute and evaluate than rates based on projections of future costs

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[1] Denver and Ephrata Telephone and Telegraph Company (Denver-Ephrata), Lexington Telephone Company (Lexington), Mankato Citizens Telephone Company (Mankato), Mid-Communications, Inc. (Mid-Communications), and Ogden Telephone Company (Ogden), request waivers of Regulation of Small Telephone Companies, Report and Order, CC Docket No. 86-467, 2 FCC Rcd 3811 (*Small Telco Order*). However, because the gravamen of their petitions concerns only Section 69.3(f) of the Rules, we focus on that rule section here. Lexington also requests waiver of Section 69.3(e)(6) of the Commission's Rules, which requires notification of NECA, by a certain date, that a carrier desires to exit the NECA pools.

[2] Ogden Petition at 1.

[3] *See* Denver-Ephrata Petition at 2 (contending that its TS rates will be approximately 18 percent lower than NECA's TS rates); Mankato Petition at 2; Mid-Communications Petition at 2.

[4] *Id.*

[5] AT&T Comments, at 2, *citing* Amendment of the Part 69 Allocation of General Support Facility Costs, 8 FCC Rcd 3697 (1993) (*GSF Order*).

[6] *Id.* at 3.

[7] *Id.* at 3-4.

[8] Ogden Reply, at 2.

[9] *Id.*.

[10] *See* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

and demand.[11] In adopting the Section 69.3(f) biennial period for the filing of Section 61.39 access tariffs by small telephone companies in odd-numbered years, the Commission explained that:

> Changes in costs and demand which affect the reasonableness of the filed rates are likely to increase over time and use of a two-year period . . . seems to strike a reasonable balance in correcting the rates while reducing the filing burdens.[12]

The Commission further determined that a period of more than two years between filings could allow small telephone companies to charge excessive rates and would "violate the rate neutrality principle."[13]

6. The Commission, however, did not forbid small telephone companies from filing access tariffs "more frequently if they so choose."[14] On the contrary, Commission found that filing access tariffs more often than every two years would not pose any risk of carriers' charging excessive rates.[15] Accordingly, the Bureau concludes that strict adherence to the Section 69.3(f) biennial filing period, which would require petitioners to wait until next year to file their access tariffs, would frustrate the underlying purpose of Sections 69.3(f) and 61.39 of affording small telephone companies with a streamlined and flexible tariffing process. Further, the record in this case indicates that grant of the required waivers will permit these carriers to tariff lower rates for access charges than they would assess if they remained in the NECA pools.

7. We believe that AT&T's concern that petitioners have failed to adjust their CL and TS costs to reflect the reallocation of GSF is premature. The rules do not require petitioners to submit cost showings that include GSF cost reallocation in support of a request for waiver of Section 69.3(f), and we see no basis for requiring a showing at this time. Nevertheless, petitioners should be prepared to submit cost data, including GSF cost reallocation, promptly upon reasonable request by the Commission or interested parties.[16] Therefore, we find that grant of waivers of Section 69.3(f) to petitioners is warranted. Accordingly, Denver-Ephrata, Mankato, Mid-Communications, Ogden and Lexington should file their access tariffs on or before April 1, 1994 in order for them to become effective on July 1, 1994 for a period of one year.[17]

8. We also address whether petitioners have satisfied the notice requirement set forth in Section 69.3(e)(6) of the Rules, 47 C.F.R. § 69.3(e)(6), which requires that a carrier notify NECA no later than December 31 of the preceding year that it will withdraw from a NECA pool.[18] Under this rule, the petitioners were required to notify NECA no later than December 31, 1993. Ogden states that it properly notified NECA of its intention to exit the TS and CL pools.[19] Denver-Ephrata, Mankato, and Mid-Communications, evidently relied on the grant of their waiver petitions as a condition precedent to their need to notify NECA, as they urge the Commission to act expeditiously "[b]ecause of the December 31, 1993 notification requirement." Because their waiver petitions were filed prior to December 31, 1993,[20] and became a matter of public record at the same time, notice sufficient to satisfy Section 69.3(e)(6) was accomplished prior to December 31, 1993.

9. Finally, Lexington explicitly asks for a waiver of Section 69.3(e)(6), claiming that its failure to file a timely notification was due to an oversight and that it filed a "concurrent notification" with its waiver petition on January 21, 1994. We conclude that in these circumstances strict application of the requirements of Section 69.3(e)(6) to Lexington would not be in the public interest. Accordingly, we waive the December 31, 1993 notification deadline set forth in Section 69.3(e)(6) as to Lexington.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 4(i), and Section 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, the petitions of Denver and Ephrata Telephone and Telegraph Company; Mankato Citizens Telephone Company; Mid-Communications, Inc.; and Ogden Telephone Company for waiver of Section 69.3(f) of the Commission's Rules, 47 C.F.R. § 69.3(f); and the petition of Lexington Telephone Company for waiver of Sections 69.3(f) and 69.3(e)(6), 47 C.F.R. § 69.3(e)(6), ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief,
Common Carrier Bureau

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[11] *Small Telco Order*, 2 FCC Rcd at 3812.
[12] *Small Telco Order*, 2 FCC Rcd at 3814.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] 47 C.F.R. § 61.39(b).
[17] *See, e.g.* OPASTCO Petition for Waiver of Section 69.3(f) of the Commission's Rules, 4 FCC Rcd 2319 (1988).
[18] 47 C.F.R. § 69.3(e)(6).
[19] Ogden Petition at 2.
[20] Denver-Ephrata Petition (filed December 15, 1993); Mankato Petition (filed November 24, 1993); Mid-Communications Petition (filed November 24, 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ALLEN PUBLIC SCHOOLS
Wewoka, OK — File No. BPLIF-920424EM

KONAWA PUBLIC SCHOOLS
Holdenville, OK — File No. BPLIF-911105DI

For Construction Permit and License in the Instructional Television Fixed Service on Channels G1, G2, G3 and G4

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 1994; Released: April 14, 1994

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Allen Public Schools (Allen) and Konawa Public Schools (Konawa), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels G1-G4 in the areas of Wewoka and Holdenville, Oklahoma, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Each applicant is qualified to be an ITFS licensee. Both are school districts that are accredited by the Oklahoma State Department of Education and that propose to provide ITFS service to schools within their jurisdictions and to others located in neighboring school districts.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523 (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 74 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being a school district serving the formal educational needs of schools within its jurisdiction.

Accreditation. Each applicant, accredited by the Oklahoma State Department of Education, is entitled to three points under this comparative criterion.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Where the amounts and types of programming proposed in the schedule and grid are inconsistent, we will consider as correct, for comparative purposes, the amount and type which result in the least number of points to the applicant, so long as the excess capacity lease permits such a level of programming. See *Hispanic Information and Telecommunications Network, Inc.*, 7 FCC Rcd 5924 (1992).

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[1] t4 PNI A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

Allen's illustrative schedule and program grid propose a weekly average of 10.75 hours of formal educational programming. Because the amount of the programming proposed does not reach the threshold amount at which merit points are awarded, Allen is entitled to no programming merit points.

Konawa's illustrative schedule proposes a per channel weekly average of 24.375 hours of ITFS programming.[3] However, the schedule does not indicate which programs are formal educational, as required by Section IV, Question 5 of the application. Accordingly, we will consider this programming as nonformal for the purpose of determining merit points. See *Valley View Independent School District*, 7 FCC Rcd 7228 (1992). In contrast, Konawa's program grid proposes an average of 4 hours of formal educational programming per channel per week. Because neither the schedule nor the grid establishes the threshold amount at which merit points are awarded, Konawa is entitled to no programming merit points.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of E or F channels seeking to relocate to other channels. Therefore, neither is entitled to the one point for such applicants.

Total. Both applicants are entitled to a total of nine points: four points for being local, three points for being accredited, and two points for observing the four-channel limitation. Consequently, we turn to our tie-breaker mechanism to determine the winning applicant.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of the channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service - Third Report and Order in MM Docket No. 83-523 (Third Report and Order)*, 4 FCC Rcd 4830 (1989); *Third Report and Order Reconsidered*, 5 FCC Rcd 945 (1990); and 47 C.F.R. Section 74.913(d). This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.[4] Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if one applicant's system reaches less than 80 percent as many students as the other applicant's. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. Konawa submitted receive site letters from schools located beyond its jurisdiction. However, these letters were not submitted prior to the "B" cut-off date of July 22, 1992 and they lack the specificity required by 47 C.F.R. Section 74.932, Note 2. Consequently, Konawa can be credited only with 696 students, the number enrolled at schools within its jurisdiction. Allen has supplied documentation showing that a total of 1,874 students will be served at its receive sites. Because the number of students credited to Konawa, 696, is less than 80 percent of the number of students credited to Allen, Allen will be authorized to operate facilities on Channels G1-G4 and the application of Konawa will be denied.

OTHER MATTERS

7. Allen proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931, to Wise Electric Cooperative, Inc. Allen has submitted a copy of the lease, which conforms in all respects with our requirements. In addition, no petitions to deny or informal objections have been filed against Allen's application.

8. We find Allen fully qualified to be an ITFS licensee and conclude that grant of Allen's application would serve the public interest, convenience and necessity.

9. Accordingly, IT IS ORDERED, That the application of Konawa Public Schools (BPLIF-911105DI) IS DENIED, and the application of Allen Public Schools (BPLIF-920424EM) IS GRANTED.

10. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[3] Konawa amended its application on March 15, 1993, after the "B" cut-off date of July 22, 1992 to increase the amount of ITFS programming it proposed to present. If considered, the amendment would upgrade Konawa's comparative position. However, an applicant's comparative position cannot be enhanced by amendments filed after the "B" cut-off date and, therefore, this amendment will not be considered. See *Second Report and Order*, 101 FCC 2d at 74.

[4] Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report and Order Recon., supra*. Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. Section 74.911 (c); *Third Report and Order*, 4 FCC Rcd at 4832. Specifically, those letters, to be signed by the administrator or authority responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated in the sites' curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from the various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. Section 74.932, Note 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 7, 1994

COMMENTS INVITED ON IOWA PUBLIC SAFETY PLAN AMENDMENT

On February 10, 1993, the Commission accepted the Public Safety Plan for Iowa (Region 15). On February 3, 1994, Region 15 submitted a proposed amendment to its plan that would reserve all unassigned channels for the State of Iowa. Because the proposed amendment is a major change to the Region 15 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before **May 16, 1994** and reply comments on or before **May 31, 1994**. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to **PR Docket 92-288 Iowa-Public Safety Region 15**.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of
Ana G. Mendez Educational Foundation
Licensee, Noncommercial Station WMTJ-TV
Fajardo, Puerto Rico

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 1994; Released: April 14, 1994

By the Chief, Mass Media Bureau:

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration (1) a Notice of Apparent Liability, released January 13, 1994, 9 FCC Rcd 247 (1994), assessing a forfeiture of $5,000 against the Ana G. Mendez Educational Foundation, licensee of noncommercial Station WMTJ-TV, Fajardo, Puerto Rico, for violation of Sections 399B of the Communications Act of 1934, as amended, and 73.621(e) of the Commission's Rules, and (2) a request for reduction or elimination of the forfeiture filed January 28, 1994, by the Foundation.

2. Our assessment reflected a finding, conceded by the Foundation, that Station WMTJ-TV broadcast commercial messages for five companies during its coverage of the 1993 U.S. Open Tennis Tournament. These broadcasts were aired on seven days during the period of August 30 through September 12, 1993. Because of the repeated nature of this violation of our prohibition on advertisements by noncommercial stations, we increased the amount of the forfeiture from $2,500 (the recommended base amount) to $5,000, as provided in the *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *pet. for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992).

3. The Foundation challenges our upward adjustment on several grounds. It asserts first that its conduct was associated with only one broadcast event--the tennis tournament--and cannot fairly be characterized as repeated. Further, it notes that the broadcasts represented a lack of proper attention on the part of station staff, and did not signify a specific intention to violate Commission Rules. Indeed, the Foundation asserts, the base forfeiture amount should be adjusted downward for good faith given these considerations, and adjusted downward yet again to reflect its history of overall compliance with Commission Rules. As a final grounds for downward adjustment, the Foundation maintains that paying its forfeiture will reduce funds available for program services to the public.

4. We accept that the forfeiture amount should be reduced to reflect the Foundation's history of compliance with our Rules. Otherwise we reject its arguments. Far from an isolated event, WMTJ-TV's broadcasts of commercial messages covered five companies and continued over seven days. The Foundation's records themselves, provided us in connection with our initial letter of inquiry, reveal several hundred commercial messages over the course of the tennis tournament.

5. That these broadcasts reflected staff inattention rather than a specific intent to violate our Rules does not justify reduction of the forfeiture. It does no good for stations to adopt policies and provide training for their staffs if these efforts are ignored in the station's daily operation. We must ultimately assess the Foundation's compliance on the basis of what appeared on the television screen during its broadcasts of the tournament. Under this standard, its violation is clear and uncontroverted. As to its argument that funds allocated for a forfeiture could be better spent elsewhere, this argument could be made by any station, noncommercial or commercial, and, therefore, is not persuasive.

6. Accordingly, the request for reduction or mitigation filed by the Ana G. Mendez Educational Foundation, IS GRANTED to the extent indicated herein and IS DENIED in all other respects. IT IS ORDERED, that the Ana G. Mendez Foundation, licensee of noncommercial station WMTJ-TV, Fajardo, Puerto Rico, FORFEIT to the United States the sum of three thousand five hundred dollars ($3,500) for the repeated violation of Section 399B of the Communications Act of 1934, as amended, and Section 73.621(e) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission, at the address indicated in the attachment to this Memorandum Opinion and Order, a check or similar instrument payable to the Federal Communications Commission. In regard to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Parts 0 and 1 of the
Commission's Rules to Reflect
a Reorganization Establishing the
Cable Services Bureau

ORDER

Adopted: March 25, 1994; Released: April 7, 1994

By the Commission:

1. The Commission has before it for consideration changes in the organizations of the Mass Media and Cable Services Bureaus. Implementation of these changes requires amendments to Parts 0 and 1 of the Commission's Rules and Regulations.

2. In order to create an effective organization to administer the Commission's regulatory program for cable television, the Commission has established a new Cable Services Bureau. The rules adopted herein reflect the creation of this new Bureau in the rules and set forth the delegations of authority to the Chief of the Bureau.

3. The amendments adopted pertain to agency organization. The prior notice procedure and effective date provisions of Section 553 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i), 5(b), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended.

4. IT IS ORDERED, effective upon release that Parts 0 and 1 of the Rules and Regulations are amended as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Final Rules

Parts 0 and 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0 - COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.5 is amended by adding a new paragraph (a)(14) to read as follows:

Section 0.5 General description of Commission organization and operations.

(a) * * *

(14) Cable Services Bureau

* * * * *

3. Section 0.61 is amended by revising paragraph (a); removing and reserving paragraph (h) and paragraphs (j) through (n); and redesignating paragraph (i) as paragraph (h) to read as follows:

Section 0.61 Functions of the Bureau.

* * * * *

(a)Process applications for authorizations in radio and television services, including conventional and auxiliary broadcast services, and direct broadcast satellite services.

* * * * *

4. Section 0.101 is added to Subpart A to read as follows:

CABLE SERVICES BUREAU

Section 0.101 Functions of the Bureau.

The Cable Services Bureau develops, recommends and administers policies and programs with respect to the regulation of services, facilities, rates and practices of cable television systems and with respect to the creation of competition to cable systems. The Bureau has the following duties and responsibilities:

(a) Administer and enforce cable television related rules and policies including those relating to rates, technical standards, customer service, ownership, competition to cable systems, broadcast station signal retransmission and carriage, program access, wiring, equipment, channel leasing, and federal-state/local regulatory relationships.

(b) Plan and develop proposed rulemakings and conduct studies and analyses (legal, engineering, social and economic) of various petitions for policy or rule changes submitted by industry or the public.

(c) Conduct studies and compile data relating to cable television operation necessary for the Commission to develop and maintain an adequate regulatory program.

(d) Advise and assist the public, other government agencies and industry groups on cable television regulation and related matters.

(e) Administer financial and other reporting systems.

(f) Investigate complaints and answer general inquiries from the public regarding cable television service.

(g) Participate in hearings before the Administrative Law Judges, the Review Board and the Commission.

(h) Process applications for authorizations in the Cable Television Relay Service.

5. Section 0.284 is amended by removing and reserving paragraph (a)(10).

6. Section 0.321 is added to Subpart A to read as follows:

CABLE SERVICES BUREAU

Section 0.321 Authority delegated.

The Chief, Cable Services Bureau is delegated authority to perform all functions of the Bureau, described in Sec. 0.101, including the authority but subject to the limitations set forth below:

(a) The Chief, Cable Services Bureau shall have authority to:

(1) Act on all applications for authorization, petitions for special relief, petitions to deny, waiver requests, objections, complaints, and requests for declaratory rulings and stays in the cable television services, that do not involve novel questions of fact, law or policy that cannot be resolved under existing precedents and guidelines;

(2) Act, after Commission assumption of jurisdiction to regulate cable television rates for basic service and associated equipment, on cable operator requests for approval of existing or increased rates;

(3) Review appeals of local franchising authorities' rate making decisions involving rates for the basic service tier and associated equipment, except when such appeals raise novel or unusual issues;

(4) Act upon complaints involving cable programming service rates except for final action on complaints raising novel or unusual issues;

(5) Evaluate basic rate regulation certification requests filed by cable system franchising authorities;

(6) Periodically review and, when appropriate, revise standard forms used in administering:

(i) The Commission's complaint process regarding cable programming service rates;

(ii) The certification process for local franchising authorities wishing to regulate rates, and

(iii) The substantive rate regulation standards prescribed by the Commission.

(b) The Chief, Cable Services Bureau shall not have authority to:

(1) Designate for hearing any formal complaints that present novel questions of fact, law or policy that cannot be resolved under existing precedents or guidelines;

(2) Impose, reduce, or cancel forfeitures pursuant to section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $20,000;

(3) Act upon any applications for review of actions taken by the Chief, Cable Services Bureau pursuant to any delegated authority which comply with section 1.115 of this chapter;

(4) Issue notices of proposed rulemaking, notices of inquiry or to issue report and orders arising from either of the foregoing, except that the Chief, Cable Services Bureau shall have authority to issue notices of rulemaking and report and orders redesignating market areas in accordance with section 614(f) of the Communications Act of 1934, as amended;

(5) Act on any applications in the Cable Television Relay Service that present novel questions of fact, law, or policy that cannot be resolved under existing precedents and guidelines.

7. Section 0.325 is added to Subpart A to read as follows:

Section 0.325 Record of actions taken.

The original file, the station file, and other appropriate files are designated to be the official record of the action taken by the Chief of the Cable Services Bureau.

8. Section 0.453 is amended by revising paragraphs (a), (a)(1) and (a)(4); and adding new paragraphs (a)(5) through (a)(7) to read as follows:

Section 0.453 Public reference rooms.

* * * * *

(a) The FCC Reference Center. The following documents, files and records are available for inspection at this location.

(1) Files containing the record of all docketed cases. A file is maintained for each docketed hearing case and for each docketed rule making proceeding. Cards summarizing the history of such cases are available for inspection.

* * * * *

(4) All complaints regarding cable programming rates, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to Section 0.459 that such information not to be made routinely available for public inspection.

(5) All cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission has assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to Section 0.459 that such information not be made routinely available for public inspection.

(6) Special relief petitions and files pertaining to cable television operations.

(7) Cable television system reports filed by operators pursuant to Section 76.403.

* * * * *

9. Section 0.455 is amended by revising paragraphs (a), (a)(1) and (a)(5); removing paragraphs (a)(6), (a)(11) and (a)(12); redesignating paragraphs (a)(7) through (a)(10) as paragraphs (a)(6) through (a)(9); and adding new paragraph (d) to read as follows:

Section 0.455 Other locations at which records may be inspected.

* * * * *

(a) Mass Media Bureau.

(1) Applications for broadcast authorizations and related files are available for public inspection in the FCC Reference Center. See Sec 0.453 (a)(2). Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See Secs. 73.3526 and 73.3527 of this chapter.

* * * * *

(5) Annual employment reports filed by licensees and permittees of broadcast stations pursuant to Sec. 73.3612 and cable television systems pursuant to Sec. 76.77.

* * * * *

(d) Cable Services Bureau. Correspondence and other actions and decisions relating to cable television services that are not filed in the FCC Reference Center.

* * * * *

PART 1 - PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Sections 1.1106 through 1.1117 are redesignated as sections 1.1107 through 1.1118.

3. Section 1.1104 is amended by removing paragraph (9) and redesignating paragraph (10) as paragraph (9).

4. A new section 1.1106 is added to read as follows:

Section 1.1106 Schedule of charges for cable television services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Cable Television Relay Service (CARS):				
a. Cable Television Relay Service:				
(i) Construction Permit (per application)	FCC 155, 327	155	MIC	See[1]
(ii) Assignment or Transfer (per station license)	FCC 155, 327	155	MIC	See[1]
(iii) License Renewal (per application)	FCC 155, 327	155	MIC	See[1]
(iv) Modification (per application)	FCC 155, 327	155	MIC	See[1]
(v) Special Temporary Authority (other than to remain silent or extend and existing STA to remain silent) (per application)	FCC 155, Corres	100	MGC	See[1]
(b) Cable Special Relief Petitions (per application)	FCC 155, Corres	790	MQC	See[1]
(c) 76.12 Registration Statements (per statement)	FCC 155, Corres	35	MAC	See[1]
(d) Aeronautical Frequency Usage Notifications (per notification)	FCC 155, Corres	35	MAC	See[1]
(e) Aeronautical Frequency Usage Waivers (per waiver)	FCC 155, Corres	35	MAC	See[1]

[1] Federal Communications Commission, Cable Services, P.O. Box 358205, Pitsburgh, PA 15251- 5205

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment to the Fee
Schedule for the Processing
of Requests for Agency Records
Pursuant to the
Freedom
of Information Act

MEMORANDUM OPINION AND ORDER

Adopted: April 5, 1994; Released: April 14, 1994

By the Managing Director:

1. The Freedom of Information Act (FOIA) requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB).[1] In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines.[2] However, because the FOIA requires that each agency's fees be based upon the direct cost incurred by the agency in providing FOIA services,[3] OMB did not provide a unitary, government-wide schedule of fees.

2. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level, based on the General Schedule effective January 1987 (including 16 percent for personnel benefits).

3. By this order, the Commission is revising the rules that set forth the fees[4] for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 C.F.R. Sections 0.460, 0.461. The revisions correspond to modifications in the rate of pay recently approved by Congress.

4. Because this is a modification of rules relating to agency procedure and practice, compliance with the notice and comment and effective date provisions is not required. *See* 5 U.S.C. Sections 553(b)(A); 553(d).

5. Accordingly, pursuant to the authority contained in Section 0.231(d) of the Commission's rules, IT IS HEREBY ORDERED, that, effective immediately, Section 0.467 of the Commission's Rules, 47 C.F.R. Section 0.467 is amended, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Andrew S. Fishel
Managing Director

AMENDATORY TEXT

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 0 - COMMISSION ORGANIZATION

1. The authority citation for Part 0 will read as follows:

AUTHORITY: 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.467 is amended by revising paragraph (a) to read as follows:

* * * * *

Section 0.467 Search and review fees.

(a) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS-2	8.72
GS-3	9.84
GS-4	11.04
GS-5	12.35
GS-6	13.77
GS-7	15.30
GS-8	16.95
GS-9	18.72
GS-10	20.61
GS-11	22.65
GS-12	27.14
GS-13	32.27
GS-14	38.14
GS-15	44.86

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

The above fees were computed at Step 5 of each grade level based on the General Schedule effective January 1994 and include 19 percent for personnel benefits.

(b) * * *

* * * * *

[1] 5 U.S.C. 552(a)(4)(A)(i).
[2] 52 FR 10012.
[3] 5 U.S.C. 552(a)(4)(A)(iv).
[4] These fees may be restricted or waived in accordance with 5 U.S.C. Section 552(a)(4)(A)(i) and 47 C.F.R. Section 0.470.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-29

In the Matter of

Amendment of Section 73.202(b), RM-8416
Table of Allotments,
FM Broadcast Stations.
(Willows and Dunnigan, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 4, 1994; Released: April 15, 1994

Comment Date: June 6, 1994
Reply Comment Date: June 21, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed on behalf of KIQS, Inc. ("petitioner"), licensee of Station KIQS-FM, Channel 288A, Willows, California, requesting the substitution of Channel 288B1 for Channel 288A at Willows, the reallotment of Channel 288B1 from Willows to Dunnigan, California, and modification of the license for Station KIQS-FM accordingly. Petitioner states that the licensee will apply for Channel 288B1 if reallotted, as requested.[1]

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner advises that the reallotment of Channel 288B1 from Willows to Dunnigan is in the public interest as it will not deprive Willows of its sole local aural transmission service,[2] and will provide Dunnigan with its first local aural transmission service. Petitioner further advises that the reallotment would enable Station KIQS-FM to increase its service area from 993 square kilometers containing 10,475 persons to an area of 4,754 square kilometers containing 161,280 persons, thus yielding an increase of 379% in areas served and an increase of 1440% in population served. Therefore, petitioner states its proposal will result in a preferential arrangement of allotments and a new service benefit to the communities involved, citing *Modification, supra*, 4 FCC Rcd at 4873-74.

3. Section 307(b) of the Commission's Rules of 1934, as amended, requires that channel allotments be distributed fairly, efficiently and equitably ... among the several States and communities. Communities are defined by the Commission as geographically identifiable population groupings. As a general rule, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status as a community for allotment purposes. Dunnigan is not listed in the U.S. Census.

4. In light of Dunnigan's lack of inclusion in the U.S. Census, and in recognition of Commission precedent requiring sufficient information in such instances to demonstrate that a locality qualifies as a community for allotment purposes,[3] petitioner states that Dunnigan contains approximately 700 residents, and has its own zip code, post office and town hall. Moreover, petitioner advises that Dunnigan has a comprehensive General Plan currently being revised, which encompasses future growth and development plans for the expanding community. Additionally, petitioner states that Dunnigan has identifiable boundaries, and contains its own water and fire protection districts. Petitioner also claims that Dunnigan has its own churches, businesses and civic clubs. Also, petitioner provided the declarations of an elected county official, an associate planner and the Chairman of the Dunnigan Community Advisory Council attesting to Dunnigan's community status. Therefore, based upon the petitioner's representations, we will not request further demographic data at this time.

5. We believe the public interest would be served by proposing the substitution of Channel 288B1 for Channel 288A at Willows, and the reallotment of Channel 288B1 from Willows to Dunnigan, since it would provide Dunnigan with its first local aural transmission service and enable Station KIQS-FM to expand its service area. However, as petitioner proposes to relocate its transmitter site to accommodate its proposal, the proposal will result in areas that will lose existing reception service. Therefore, although petitioner provided information in its proposal concerning the areas and population which will receive new service, it is requested also to provide data regarding the areas and populations which will lose existing service if Channel 288B1 is reallotted to Dunnigan.[4] The study should also reflect the total reception service that is now available within the gain and loss areas.[5]

[1] We are advised that an application (File No. BAPH-940203GY) for assignment of license for Station KIQS-FM from KIQS, Inc. to Pacific Spanish Network, Inc. ("PSNI") has been filed recently. Therefore, PSNI should submit comments in this proceeding stating its intention to pursue the modification proposal initiated by the petitioner. We will serve a copy of this *Notice* on PSNI.

[2] Willows is also served by Station KIQS(AM).

[3] *See, e.g., Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); *Statenville, Georgia*, 5 FCC Rcd 2685 (1990); and *Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989).

[4] As the Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." *See Modification, supra*, at 5 FCC Rcd 7097.

[5] Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, one considers the area of service circumscribed by the station's 1.0 mV/m signal contour.

6. Channel 288B1 can be allotted to Dunnigan, California, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site, located 7.3 kilometers (4.5 miles) northeast of the community at coordinates North Latitude 38-55-34 and West Longitude 121-54-10.

7. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Dunnigan, California	--	288B1
Willows, California	288A	--

8. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice* to counsel for Pacific Spanish Network, Inc., proposed assignee of Station KIQS-FM, as follows: Robert Lewis Thompson, Esq., Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, N.W., Washington, D.C. 20006.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **June 6, 1994**, and reply comments on or before **June 21, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Arthur B. Goodkind, Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

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assuming maximum facilities for the class of station, except Class C. For Class C stations, one uses the *minimum Class C* facilities, whichever is greater. The area of reception service for full-time AM stations is defined according to whether it is a clear channel Class AM station or another class of full-time AM station. For a clear channel Class A station the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's *nighttime* interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: April 14, 1994

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. On a monthly basis, a public notice is released and the entire text of these fee decisions is published in the FCC Record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Atkinson, Frances G. - Request for refund of a hearing fee for a FM station at Beach Mountain, North Carolina - **Granted** (February 28, 1994).

CarePhil Communications - Request for waiver of a filing fee for a station at Broken Bow, Oklahoma - **Granted** (March 16, 1994).

Davis, Ivon O. - Request for refund of a hearing fee for a new FM station at Lafayette, Tennessee - **Granted** (March 18, 1994).

Extech Instruments Corporation - Request for refund of a filing fee submitted with an application for equipment authorization - **Denied** (February 28, 1994).

Maroa Broadcasters, L.P. - Request for refund of a hearing fee for a new FM broadcast station at Maroa, Illinois - **Granted** (March 16, 1994).

North Bay Broadcasting, Inc. - Request for refund of hearing fee for a station at Petaluma, California - **Granted** (March 16, 1994).

Northern Arizona University - Request for waiver of filing fee for a station at Flagstaff, Arizona - **Granted** (March 7, 1994).

Southern California Broadcasting Company - Request for refund of a hearing fee for a station at Glendale, California - **Granted** (March 18, 1994).

Topfly Corporation - Request for refund of a filing fee submitted with an application for equipment authorization - **Denied** (February 28, 1994).

University of Northern Iowa - Request for refund of a filing fee for a station at Cedar Falls, Iowa - **Granted** (March 1, 1994).

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE PRIDE, CHIEF, FEE SECTION ON (202)632-0241.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

28 FEB 1994

Robert S. Stone, Esquire
McCampbell & Young
2021 Plaza Tower
Post Office Box 550
Knoxville, Tennessee 37901-0550

Re: Frances G. Atkinson
Beech Mountain, North Carolina
FM Channel 272A
File No. BPH-911224MC

Dear Mr. Stone:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. § 1.1111. The subsection checked below is specifically applicable to your request.

____ No fee is required for the above referenced submission (§1.1111(a)(1)).

____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

____ The applicant cannot fulfil the prescribed age requirement (§1.1111(a)(3)).

____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(6)).

__X__ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(3)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

Vincent J. Curtis, Jr., Esq.
Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209

Dear Mr. Curtis and Ms. Crump:

This is in response to your request for refund of a rulemaking fee submitted on behalf of CarePhil Communications (CarePhil), licensee of Station KKBI(FM), Broken Bow, Oklahoma, in connection with its application to upgrade the station's authorization back to Class C2.

You explain that the former licensee to Station KKBI obtained a construction permit to upgrade from Class A to Class C2, but difficulties in securing a transmitter site forced him to file for an automatic downgrade to Class C3. Subsequently, CarePhil acquired the station and applied for an extension on the C2 permit. One and a half years later, CarePhil simultaneously was granted the C3 permit and the C2 permit extension. At or about the same time, however, CarePhil found that it was able to work out the longstanding difficulties in securing the site specified in its C2 permit, and thus sought to abandon its plans to downgrade to C3 in favor of constructing in accordance with the terms in its C2 application. CarePhil informed the Commission by letter of its intentions, but was unable to do so until four days after the 30 day period for filing petitions for reconsideration.

CarePhil later applied for an extension of the C2 permit only, having notified the Commission by letter that it wished to abandon its plans to downgrade. The extension was granted and it bore the C2 permit file number. You state, however, that when CarePhil applied for a license to cover its C2 permit, a question arose as to whether CarePhil should submit a new petition for rulemaking to return the allotment to C2 status, since more than 30 days had elapsed from the time the downgrade to C3 was granted to the time CarePhil notified the Commission that it did not want to pursue the downgrade. CarePhil filed a petition for rulemaking, no party other than CarePhil filed comments, and the Report and Order restored the C2 allotment to Broken Bow. However, the Report and Order also specified that CarePhil should submit a minor change application for the construction permit. CarePhil's counsel contacted the Commission's staff and was informed that this was not necessary and that CarePhil should submit a letter requesting that its pending license application be processed. CarePhil submitted this letter and on September 3, 1993, was informed by letter from the Chief, FM Branch, that it was required to submit an application for a construction permit to upgrade and to submit the appropriate application and rulemaking fees.

You now request that the rulemaking fee be waived on the grounds that CarePhil was not advised that it had to pay such a fee until the September 3 letter from the FM Branch; that the Commission's grant of the C2 extension applications led CarePhil to believe that the C2 allotment was still viable; that filing the new rulemaking was merely a formality; that

few regulatory costs were expended because no comments other than CarePhil's were filed; and that if CarePhil, though forced to try to extract itself from this procedural tangle, had instead filed an upgrade using the Commission's "one-step" procedure clarified in Public Notice, Mimeo No. 34706, released August 31, 1993, it would now only have to pay the filing fee charged for minor change applications.

Upon consideration of your request, mindful of the unusual procedural nature of this case, we conclude that a waiver of the rulemaking fee may be granted. In particular, we are persuaded that CarePhil did not learn that it was required to go through a rulemaking until it had completed construction of its C2 proposal, and did not learn that a fee was required for that rulemaking until some time later. Also, it appears that in this case, that rulemaking required the expenditure of few regulatory resources, and, if filed today, would be able to qualify for the one-step filing procedure requiring only the minor change application fee. In short, we do not believe that the public interest will be served in this case by requiring CarePhil to submit a rulemaking fee to restore the C2 allotment to Broken Bow, Oklahoma. However, CarePhil still must submit a minor change application along with the appropriate fee.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 1 8 1994

Timothy K. Brady, Esq.
7113 Peach Court
P.O. Box 986
Suite 208
Brentwood, Tennessee 37027-0986

Re: Ivon O. Davis
Lafayette, Tennessee
Fee Control # 9201078170325001

Dear Mr. Brady:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. § 1.1111. The subsection checked below is specifically applicable to your request.

____ No fee is required for the above referenced submission (§1.1111(a)(1)).

____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

____ The applicant cannot fulfil the prescribed age requirement (§1.1111(a)(3)).

____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(6)).

__x__ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(3)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

28 FEB 8 1994

Mr. Jacob Lin, TRC
No. 5-3
Lane 21
Yen Chiu Yuan Rd.
Sec. 4
Taipei, 11521
Taiwan . R.O.C.

Dear Mr. Lin:

This is in response to your request for refund of the fee submitted with an application for an equipment authorization filed by Extech Instruments Corporation (Extech).

The Equipment Authorization Branch dismissed Extech's application because it requested authorization for a product already certified. See letter from Charles M. Cobbs, Equipment Authorization Branch, dated September 24, 1993.

I regret to inform you that your request may not be granted. Section 1.1111 of the Commission's Rules governing fee refunds makes no allowance for refund in the circumstances underlying the dismissal of Extech's application. See 47 C.F.R. § 1.1111. Moreover, the Commission has determined that a refund will not be granted once an application has cleared the fee review process without regard to the disposition of that application. See Establishment of a Fee Collection Program, 2 FCC Rcd 947, 949 (1987), Recon. denied, 3 FCC Rcd 5987 (1988).

Accordingly, your request is denied.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 1 6 1994

John S. Neely, Esquire
Miller & Miller, P.C.
1990 M Street, N.W.
Suite 760
Washington, D.C. 20036

Re: Maroa Broadcasters, L.P.
File No. BPH-920806MC
For a new FM station at
Maroa, Illinois

Dear Mr. Neely:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. § 1.1111. The subsection checked below is specifically applicable to your request.

____ No fee is required for the above referenced submission (§1.1111(a)(1)).

____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

____ The applicant cannot fulfil the prescribed age requirement (§1.1111(a)(3)).

____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(6)).

_X_ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(3)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

16 MAR 1994

Richard S. Wright, Esq.
1001 Bridgeway
Sausalito, California 94965

Dear Mr. Wright:

This is in response to your "Comparative Hearing Fee Refund" submitted on behalf of North Bay Broadcasting, Inc. (North Bay), former renewal applicant for the license to radio broadcast station KTOB(AM), Petaluma, California.

You have submitted with your request a letter from this office which determined that North Bay's previous fee refund request was premature due to uncertainty as to whether its renewal application could be considered immediately grantable. You now explain that North Bay's renewal application has been dismissed, and the Commission has granted a transfer of the license to another applicant without having to go through any hearing, and request that North Bay's refund be granted.

Because North Bay's renewal application has effectively been dismissed by the grant of transfer of control to another applicant without a hearing, the hearing fee it paid on July 15, 1991 may be refunded pursuant to Section 1.1111(b)(2) of the rules. Accordingly, a check for $6,760, payable to the maker of the original check, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 7 1994

Laura Montgomery, Esquire
Arter & Hadden
1801 K Street, N.W.
Suite 400K
Washington, D.C. 20006-1301

Dear Ms. Montgomery:

This is in response to your letter on behalf of Northern Arizona University requesting an exemption from the filing fee requirement and a refund of the fee that was submitted in connection with an application to modify its license covering a transmit/receive earth station.

You state that Northern Arizona is a state university providing noncommercial, educational programming. Further, you state that Northern Arizona filed its application in order to transmit to international points of communication. Northern Arizona's transmissions are used to provide programming to teach Spanish as a second language. The University charges its standard fees to participants in the course.

Section 1.1112 of the Commission's rules provides for exemptions from the fee requirement for certain categories of applicants. 47 C.F.R. § 1.1112. Among the exempt categories are governmental entities, including state governments and political subdivisions thereof, controlled by duly appointed public officials. See 47 C.F.R. § 1.1112(f). The exemption specifically applies to modifications of station authorizations. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1987, 2 FCC Rcd 947, 959 (1987).

Based on the foregoing, we find that Northern Arizona is an entity exempt from the fee requirement since it is a political subdivision of the State of Arizona. As such, it is entitled to a refund of the fee it submitted.

Accordingly, your request is granted. A refund, drawn in the amount of $1,525.00 and made payable to the maker of the original check, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

18 MAR 1994

John Crigler, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633

Re: Southern California Broadcasting Company
Station KIEV(AM)
Glendale, California
Fee Control # 9307078170021001

Dear Mr. Crigler:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. § 1.1111. The subsection checked below is specifically applicable to your request.

____ No fee is required for the above referenced submission (§1.1111(a)(1)).

____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

____ The applicant cannot fulfil the prescribed age requirement (§1.1111(a)(3)).

____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(6)).

_x_ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(3)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

28 FEB 1994

Mr. Mike C.I. Kuo
Office Manager
Compliance Engineering Services, Inc.
P.O. Box 612650
San Jose, California 95161-2650

Dear Mr. Kuo:

This is in response to your request for refund of the fee submitted with an application for an equipment authorization filed by Topfly Corporation (Topfly).

You state that Topfly's application was dismissed because it requested authorization for a product already certified.

I regret to inform you that your request may not be granted. Section 1.1111 of the Commission's Rules governing fee refunds makes no provision for refund in the circumstances underlying the dismissal of Topfly's application. 47 C.F.R. § 1.1111. Moreover, the Commission has determined that a refund will not be granted once an application has cleared the fee review process without regard to the disposition of that application. See Establishment of a Fee Collection Program, 2 FCC Rcd 947, 949 (1987), Recon. denied, 3 FCC Rcd 5987 (1988).

Accordingly, your request is denied.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

MAR 1 1994

Mr. Douglas L. Vernier
Director of Broadcasting
Communication Arts Center
University of Northern Iowa
Cedar Falls, Iowa 50614-2682

Dear Mr. Vernier:

This is in response to your request for a determination that the University of Northern Iowa (Northern Iowa) is exempt from the Commission's fee requirement and, therefore, is not required to submit a fee with its application for a temporary fixed earth station.

You state that Northern Iowa is a chartered state university and that it intends to use the proposed earth station facility to support its distant learning program, to provide educational conferences for national distribution, and to provide uplink services for external users in support of University objectives.

Section 1.1112 of the Commission's rules provides for exemption from the fee requirement for certain categories of applicants. 47 C.F.R. § 1.1112. Among the exempt categories are governmental entities, including state governments and political subdivisions thereof. See 47 C.F.R. § 1.1112(f).

Based on your representations concerning Northern Iowa, we are satisfied that it is a state university and, therefore, exempt from the fee requirement imposed by section 1.1112(f).

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

*U.S. Government Printing Office: 1994 — 300-942/00016